

SENATE BILL REPORT

SB 6005

As of January 22, 2024

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

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

Sponsors: Senators Lovelett, Nguyen, Frame, Hasegawa, Lias, Nobles, Pedersen, Saldaña, Salomon and Stanford.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/23/24.

Brief Summary of Bill

- Requires producers of certain consumer packaging and paper products (covered products) to join or register with a producer responsibility organization (PRO), subject to funding, planning, and performance requirements, to increase the recycling and reuse rates of covered products.
- Modifies minimum postconsumer recycled content (PCRC) requirements by: (1) including additional product types in PCRC requirements, (2) moving responsibility for the registration and reporting of covered products required to also meet PCRC requirements to the PRO, and (3) amending existing PCRC requirements for products subject to PCRC requirements that are not covered products.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Matt Shepard-Koningsor (786-7627)

Background: Solid Waste Management in Washington. Under the state's solid waste management laws, local governments are the primary entities responsible for implementing

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.

state solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws. Ecology must work cooperatively with local governments as they develop their local solid waste management plans. County and city solid waste management plans must 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 those 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 (MRFs), which receive, compact, repackage, or sort materials for the purposes of recycling.

State law establishes the following priorities for the collection, handling, and management of solid waste in descending order as applicable:

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

Extended Producer Responsibility and Product Stewardship Programs. The Legislature has enacted laws requiring the establishment of product stewardship programs to manage six types of products: (1) electronic products (2006), (2) mercury-containing light bulbs—such as compact fluorescent lights (2010), (3) photovoltaic solar panels (2017), (4) pharmaceuticals (2018), (5) paint (2019), and (6) batteries (2023).

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 overseeing 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, in addition to 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 ten 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 of 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 to the Legislature from a contracted consultant that was mandated by a 2023 Operating Budget proviso, which directed a study to: (1) develop recycling, reuse, and source reduction performance target rates for consumer packaging and paper materials, and (2) conduct a community input process to gather input from Washington residents about their views and opinions on the state's recycling system. The targets study in the report includes a summary of recycling, reuse, and source reduction target rates set by other jurisdictions and findings from modeling the impact of four policy scenarios on recommended target recycling and reuse rates for the near-term, 2032, and beyond. The policy scenarios included studying the implementation of: (1) an extended producer responsibility program, (2) a deposit return system, (3) PCRC, (4) truth-in-labeling, and (5) reuse targets.

Minimum Recycled Content Requirements. In 2021, the Legislature established minimum PCRC 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 PCRC rates and timelines over which the minimum recycled content rates increase apply to:

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

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

requirements were required to register with Ecology and pay fees to cover Ecology's administrative costs related to minimum PCRC requirements beginning in 2022.

Manufacturers of products subject to PCRC requirements may be assessed penalties for not achieving the requirements. Penalties are calculated using a specified formula, based upon the amounts in pounds of virgin plastic, PCRC plastic, and other plastic used by the 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 adopted initial PCRC rules on October 31, 2023, which took effect on December 1, 2023. The rules apply to registrations and reports due April 1, 2024, in addition to upcoming minimum PCRC requirements.

Litter Tax. The Waste Reduction, Recycling, and Litter Control Act (Litter Control 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 a 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 Litter Control 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: Producer and Producer Responsibility Organization Duties for Covered Products. *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 certain entities associated with covered PPP, but do not include government entities, nonprofits, or certain producers that sell, offer for sale, distribute, or import less than one ton of covered PPP, or has global gross

- revenue of less than \$5 million;
- packaging is defined to include various materials, including single-use items that facilitate food or beverage consumption; and
- covered PPP does not include materials intended for long-term use associated with certain durable products; materials used to package federally-regulated pesticide products, medical devices, drugs, or animal biologic drug products; reusable or refillable propane gas containers; certain paint containers; qualifying beverage containers subject to a refund value for which a distributor responsibility organization or other entity has received approval from Ecology to implement; or certain products that are individually or categorically excluded temporarily after a determination 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 joined;
- October 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 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, which is later: a PRO must begin implementing its approved plan; and
- July 1, 2030: PROs 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 other producers independently fulfilling the responsibilities of a PRO. The bill provides additional logistical details to PROs registering with Ecology after 2027. Ecology must review and approve submitted plans and annual reports, and additional procedures must be followed if a submitted plan or report is not approved by Ecology.

Producer Responsibility Organization Plans. Ecology must determine the contents of a PRO plan. PRO plans for covered PPP must address all aspects of program implementation responsibilities assigned to producers and PROs. PROs must provide information about services and other details for each county and city that adopts a local solid waste plan. Plans submitted to Ecology cover five calendar years. Plans must include a contingency plan component demonstrating how plan activities will be carried out by an entity other than the PRO if the PRO is unable to carry out plan implementation. 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.

When submitting or updating a plan, PROs 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. If 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. PROs must 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. PROs, 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 U.S. or member countries of the Organization for Economic Cooperation and Development;
- at MRFs that ensure workers are not paid less than the prevailing wage for the same trade or occupation; and
- using mechanical recycling processes, except for any alternative recycling processes approved by Ecology after the PRO demonstrates that negative environmental impacts of the alternative process are similar or lesser than the negative environmental impacts of recycling that uses purely mechanical means.

PROs must include certain measures to track, verify, and report on the responsible management of covered PPP. Except for certain scrap metal facilities, MRFs receiving covered PPP collected by private service providers or government entities must annually report specified information to Ecology, including the quantity and quality of inbound and outbound material, material destinations, contamination management, permit violations, and labor metrics. Information reported by MRFs must be independently audited by a third party, upon Ecology request.

Producer Responsibility Funding and Investments. The PRO's operations must be fully funded by producers without charging a nonreimbursable point-of-sale fee to customers, 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 upon the estimated cost of managing covered PPP material categories, while seeking to avoid material categories subsidizing other material

- categories; and
- must use eco-modulation factors, of which some examples are listed, to incentivize the use of packaging design attributes reducing negative environmental impacts of covered PPP.

PROs must fund and support investments in infrastructure and market development, as needed, to achieve convenience standards, management standards, and performance rates, or to address infrastructure gaps identified in the needs assessment carried out under Ecology oversight. Several investment examples are listed. 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 in any asset or company to which PRO funds are directed and does not confer any inherent right to control use of any asset or company operations.

Government and Private Service Provider Reimbursement. Government entities may enter into contractual agreements with a PRO for reimbursement. PROs 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 regulated by the UTC, PROs must reimburse companies holding a certificate to provide services to residential customers. Reimbursement rates must be consistent 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, the UTC-approved company must offer service to single- and multi-family residences wherever curbside garbage collection is offered, include collection of all covered PPP, and be in a manner consistent with solid waste and transportation laws.

Convenience. Convenient collection services must be available in every jurisdiction where 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 multi-family 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, while meeting certain convenience standards.

Retail establishments may, but are not required to, serve as drop-off collection or collection event sites. For the initial plan implementation, PROs must provide public place collection

at locations where existing recycling collection receptacles were provided by government entities. PROs must provide information regarding locations of collection services for covered PPP.

Education and Outreach. PROs must implement accessible and clear education and outreach activities to reach a diverse population, with specified activities, including developing materials, coordinating with government entities, and 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:

- adopt necessary rules, which seek to harmonize with other states that have adopted similar producer responsibility programs; are home to producers that do or could supply significant amounts of covered PPP into the state; or where Washington does or could supply such quantities;
- maintain a public website;
- administer the packaging financial assistance grant program;
- issue civil penalties and orders;
- review PRO plans and annual reports on a specified timeline; and
- prepare an annual workload analysis to determine costs of the program, and determine fees based on the workload analysis.

In addition to several specified duties and other authority, Ecology must arrange for the following actions to be completed:

- by October 1, 2025, and within 30 days of approving a PRO plan, Ecology must identify materials and methods for uniform statewide recycling collection of covered PPP, distinguishing between materials for curbside, drop-off, or alternative collection. Ecology must consider end-markets, environmental factors, compatibility with existing recycling infrastructure, material amounts, contamination, sorting and storage practicalities, and other factors;
- by October 1, 2026, Ecology must complete a statewide needs assessment (assessment), carried out by a third-party consultant and funded by PROs. The assessment must use recycling rates from previous plastics packaging reports, use Ecology's statewide collection lists for covered PPP, evaluate current and future recycling infrastructure and associated costs, evaluate how the state's recycling system can be managed in a socially-just manner, and other specified requirements. The assessment must also be completed in consultation with PROs, the UTC, an advisory council, and cities and counties involved in solid waste management planning; and
- by January 1, 2028, Ecology must create a model comprehensive solid waste management plan amendment for use by jurisdictions instead of amending their solid waste management plan to account for PROs managing covered PPP.

An advisory council is established and consists of specified Ecology-appointed members

representing local and tribal governments, special purpose districts, community-based organizations, environmental nonprofit organizations, small businesses, the recycling industry, producers of covered PPP, packaging suppliers, and retail establishments. The advisory council must, among other things, provide advice and recommendation on the assessment, review and comment on statewide collection lists, consult with PROs regarding their plans and annual reports, provide input on Ecology's proposed rules, and consult with Ecology regarding PROs not meeting certain requirements.

Solid Waste Planning and Collection. A PRO must meet curbside collection service obligations through existing services in jurisdictions already collecting source-separated recyclable materials from residences. Where a solid waste collection company, regulated by the UTC, collects source-separated recyclable materials from residences, 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—consistent with local government and UTC solid waste collection authority. A PRO must contract with existing recycling depots or drop-off center locations to provide collection of covered PPP under specified conditions.

Local jurisdictions that provide source-separated recycling to residents are not required to participate in a PRO plan. A county may adopt an ordinance directing that the full list of materials on the uniform statewide collection list identified as suitable for residential curbside collection be collected exclusively through drop-off locations in UTC-regulated areas if the area was designated as rural in the solid waste management plan and no curbside recycling service was offered as of 2024.

Beginning January 1, 2029, except in counties adopting an ordinance as described above, local solid waste management plans must:

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

Local solid waste management plans must be amended, revised, or updated by January 1, 2029, to include these requirements. If a plan is not updated, the model comprehensive solid waste management plan amendment developed by Ecology applies until the plan is updated accordingly. The UTC must review PRO reimbursement of regulated service providers and require providers to deliver covered PPP only to MRFs meeting the labor standards applicable to facilities managing covered PPP under PRO plans. The UTC must include all costs related to the implementation of curbside recycling services of solid waste collection companies under PRO plans in the base for collection rates of regulated service providers.

The UTC must adopt rules establishing a schedule 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, in addition to other requirements. For residential recycling customer reimbursement, the UTC must adopt rules establishing a credit mechanism for customer reimbursement and maintain existing billing practices. Solid waste collection companies are not required to issue billing credits if it has not received PRO reimbursement to cover the full costs of providing service. Covered PPP are excluded from the ability of 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 who are subject to existing minimum PCRC requirements are shifted so that registration, annual fee payment, reporting, and penalties related to PCRC requirements are managed through the PRO, rather than Ecology. Beginning March 1, 2026, a PRO must assume responsibility for existing PCRC requirements of covered PPP.

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 household cleaning and personal care products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act. 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 changed from a per-pound of underperformance penalty to a per-day-of-violation penalty. The products subject to PCRC requirements are expanded to include new products, some of which are covered PPP and whose PCRC requirements are managed through a PRO, and others that are not covered PPP and whose PCRC requirements are managed directly by Ecology.

The following products must be managed through a PRO and have new PCRC requirements:

- 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 by Ecology, require 30 percent PCRC from 2026-2030 and 80 percent PCRC beginning in 2031.

Beginning January 1, 2025, manufacturers and individuals may only sell, offer for sale, or distribute for use in or into the state, plastic collection bins used to collect recyclables, compostable materials, or garbage made from at least 25 percent PCRC. Existing bins in the possession of a solid waste collection company are exempt until the the expiration of the bin's useful life, and persons with existing municipal contracts are exempt until the end of the contract period. Upon request, manufacturers and sellers of collection bins must provide information certifying the bins meet the PCRC requirements.

De minimis producers are exempted from PCRC requirements but must annually notify the PRO or Ecology of its status, as appropriate, depending on whether the product is covered PPP under the PRO. 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 for an upcoming year in a manner similar to the process available to PCRC products directly overseen by Ecology, but petitions must be submitted through the PRO.

Litter Tax Study. Ecology and the Department of Revenue, in consultation with PROs, must study the impacts of producer requirements on the litter rates of covered PPP and possible improvements to the litter tax structure. Possible improvements may not include increasing the litter tax or expanding the types of covered PPP. Ecology must report to the Legislature on recommendations by January 1, 2029.

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

PROs, MRFs, or other processing facilities submitting confidential information to Ecology regarding PRO or PCRC requirements may request that the information be used only by Ecology, and Ecology must grant the request if maintaining confidentiality is not detrimental to the public interest and is otherwise consistent with Ecology's policies.

Entities eligible for state or local incentives or financial assistance programs are not affected by the establishment of a PRO or producer PCRC requirements.

The UTC authority 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. Federal criteria may be adopted in lieu of these requirements. Local governments may not enforce ordinances prohibiting products from making specified claims about the recyclability of products.

A severability clause is included.

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.