

# SENATE BILL REPORT

## SB 6180

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As of January 22, 2024

**Title:** An act relating to improving the outcomes associated with waste material management systems, including products affecting organic material management systems.

**Brief Description:** Improving the outcomes associated with waste material management systems, including products affecting organic material management systems.

**Sponsors:** Senators Lovick, Keiser, Nguyen, Salomon, Torres, Valdez, Warnick and Wilson, J..

**Brief History:**

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

### Brief Summary of Bill

- Creates new, and modifies existing, grant programs related to food waste reduction, policy implementation, and compost products.
- Amends organic material collection requirements in certain jurisdictions and for certain businesses.
- Requires collection bins for garbage, recycling, and organic materials to comply with new color standards.
- Establishes food safety and quality labeling requirements beginning in 2026.
- Prohibits the use of plastic produce stickers beginning January 1, 2028, and amends other plastic and compostable product requirements.
- Requires external training for compost facility operators, and amends compost procurement requirements.
- Directs the Center for Sustainable Food Management to convene a work group to study food donations, recovery systems, and infrastructure.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** Solid Waste, Organic Materials, and Food Waste Management. Under Washington's solid waste management laws, local governments are the primary government entity responsible for implementing solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws, including responsibility for working cooperatively with local governments as they develop their local solid waste management plans; evaluating, analyzing, and monitoring the state's solid waste stream; and developing a statewide solid waste plan that, in part, addresses organic material wastes.

In 2019 Washington established a goal to reduce the annual generation of food waste by 50 percent by 2030 which included a sub-goal of reducing edible food waste by 50 percent. Ecology, working with other agencies, adopted the Use Food Well Washington plan (plan) in December 2021. The plan contained 30 federal and state policy recommendations.

In 2022 the Legislature enacted HB 1799, which established several new requirements related to organic material management. Organic materials include manure, yard debris, food and food processing waste, wood waste, and garden waste, but do not include chemically or biologically contaminated materials that would render a finished product of an organic material management process, such as composting or anaerobic digestion, unsuitable for general public or agricultural use. HB 1799 established goals for organic material management, including a goal for the landfill disposal of organic materials at a level in 2030 that is 75 percent less than in 2015, and a goal that at least 20 percent of the volume of edible food disposed of as of 2015 be recovered for human consumption by 2025. These goals are in addition to the food waste reduction goals.

Washington Center for Sustainable Food Management. HB 1799 created the Washington Center for Sustainable Food Management (Center) within Ecology. The Center's purpose is to help coordinate statewide food waste reduction by performing certain activities, including, among others:

- coordinating the implementation of the plan;
- drafting plan updates and measuring progress;
- providing staff support to multi-state food waste reduction initiatives;
- facilitating and coordinating partnerships focused on food waste reduction;
- collecting and maintaining data on food waste, wasted food, and food donations;
- developing and maintaining statewide food waste and contamination reduction campaigns with other agencies and stakeholders;
- distributing and monitoring grants dedicated to food waste prevention, rescue, and recovery; and
- researching and providing support to local governments related to adopting certain solid waste ordinances or policies.

Organic Materials Management in Certain Jurisdictions. Beginning January 1, 2027, each county or city implementing a local solid waste management plan must provide source-separated organic solid waste collection services either bi-weekly or 26 weeks annually to all residents and to businesses generating at least 0.25 cubic yards of organic materials per week, and must provide for organic materials management of collected organic materials. Counties and cities may charge and collect fees or rates for these services, consistent with the jurisdiction's authority to impose fees and rates for solid waste collection services. The organic materials collection and management requirements do not apply:

- in counties and cities implementing a solid waste plan that disposed of less than 5000 tons of solid waste in the previous year;
- in counties and cities implementing a solid waste plan that have less than 25,000 people;
- in counties and cities implementing a solid waste plan that has between 25,000-50,000 people where curbside organic solid waste collection services are not offered anywhere in the jurisdiction, as of July 1, 2022;
- in census tracts that have a population density of less than 75 people per square mile that are serviced by the jurisdiction and located in unincorporated portions of a county planning under the Growth Management Act (GMA);
- outside of urban growth areas in unincorporated portions of a county planning under the GMA; or
- in counties or cities with a waiver granted by Ecology, based on certain factors, including the distance to organic materials management facilities, the facilities' ability to manage the organic materials, and certain transportation restrictions of organic materials.

Beginning January 1, 2030, and only if Ecology determines the organic material management goals have not or will not be achieved, Ecology may adopt a rule requiring certain jurisdictions otherwise exempted based on population density, outside of urban growth areas, or under a waiver, to comply with the organics material collection and management provisions. Any city that newly begins implementing an independent solid waste plan after July 1, 2022, must meet organic material collection requirements. When developing, updating, or amending a comprehensive solid waste management plan after July 1, 2024, the plan must consider the transition to providing organic materials collection services to certain residents and businesses in 2027.

Organic Materials Management Requirements for Certain Businesses. Each July 1st, Ecology must determine which counties and cities preparing solid waste plans provide for businesses to be serviced by providers that collect food and other organic waste for delivery to solid waste facilities using composting, anaerobic digestion, vermiculture, black soldier fly, or other similar technologies to manage the collected organic wastes (organic materials management). Unless a county or city does not have available businesses that collect and deliver organic materials to solid waste facilities providing for organic materials management or the solid waste facilities where businesses collect and deliver organic

materials do not have available capacity, Ecology must determine and designate that the organic materials management requirements apply to businesses in the county or city. Requirements for organic materials management and collection by certain businesses are phased-in as follows:

- January 1, 2024: businesses generating at least eight cubic yards of organic material waste per week must arrange for organic materials management services;
- January 1, 2025: businesses generating at least four cubic yards of organic material waste per week must arrange for organic materials management services; and
- January 1, 2026: businesses generating at least four cubic yards of solid waste per week must arrange for organic materials management services.

Ecology may modify these volumetric thresholds under certain conditions.

Compost Reimbursement and Procurement. *Compost Reimbursement Program.* HB 1799 directed the Washington State Department of Agriculture (WSDA) to establish a compost reimbursement program to reimburse, beginning July 1, 2023, certain farming operations for the purchase and use of compost products not generated by the farming operation. Eligible uses include transportation, spreading equipment and associated maintenance costs, labor, and fuel. A farming operation must complete an eligibility review with Ecology prior to transporting or applying compost products for which reimbursement is sought. Farming operations may not seek reimbursement for purchase or labor costs for its own compost products, compost products transferred to another individual or entity, or compost products not purchased from a facility with a solid waste handling permit. Farming operations are eligible to receive reimbursement for up to 50 percent of their costs incurred each fiscal year, up to \$10,000 per fiscal year. WSDA must submit an annual report to the Legislature with specified information on compost reimbursement.

*Compost Procurement.* Each city or county with over 25,000 residents or that provides organic material collection services must adopt a compost procurement ordinance to implement the 2020 requirement for local governments to consider the use of compost products in projects and to use compost products in a project except when availability, health, quality, safety, or price-competitive criteria are not met. In developing a compost procurement ordinance, each city or county must plan to use compost products in landscaping projects; construction and post-construction soil amendments; projects preventing erosion, filtering stormwater runoff, promoting vegetative growth, or improving roadways; and low-impact development and green infrastructure to filter pollutants or keep water on site. By December 2024, and every two years, each city or county must submit a report covering the previous year's compost procurement activities to Ecology, which must include information on the total tonnage of organic materials diverted, the volume and cost of purchased compost, and the source of the compost.

Food Labeling Requirements. The U.S. Food and Drug Administration (FDA) regulates the labeling of foods within the U.S., except meat and poultry, which are regulated by the U.S. Department of Agriculture (USDA). Food labeling requirements apply to nutritional

labeling, ingredients and possible allergens, and quantity or volume. Federal law generally does not require products to be marked with a quality or safety date, however, the FDA requires a use by date on infant formula, and the USDA requires a pack date for poultry products and canned products to enable product tracking in interstate commerce. Meat, poultry, and egg products under USDA jurisdiction may be voluntarily labeled with a use by date. If labeled, a product must state the month and day, and the date must be accompanied by a phrase explaining the meaning of the date, such as best if used by.

States may establish food labeling requirements that do not conflict with federal law. In Washington, all perishable packaged foods in intrastate commerce with a projected shelf life of 30 days or less must state a pull date on the product packaging, which must include a month and day and be easily-read by consumers. Pull date means the latest date a perishable packaged food may be offered for sale to the public. WSDA may impose a civil penalty of up to \$500 for a violation of pull date requirements.

A local health jurisdiction is either a county or multi-county local health agency operated by local government with oversight and direction from a local board of health that provides public health services within a defined geographic area. Services include drinking water testing, food safety inspections, and food worker training.

Product Degradability Requirements. State law contains several requirements related to how the degradability of plastic or non-plastic products is communicated by labels, tinting, and coloring. Products labeled as compostable and sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier must use green, brown, or beige labeling, color striping, or other marks that help differentiate between compostable items and non-compostable materials. Manufacturers or suppliers of food service products and film products, other than film bags, that meet the American Society for Testing and Materials (ASTM) composting standards, for plastics or plastic-coated substrates must ensure that items are readily- and easily-identifiable. Readily- and easily-identifiable film wrap and food service products must be labeled with a logo indicating the product meets ASTM standards, and labeled with the word "compostable," where possible. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks. Other characteristics, such as color and graphic elements, are encouraged for compostable film wrap and food packaging and service ware.

Food service products and film products, including film bags, not meeting ASTM composting standards are prohibited from using tinting, labeling, and terms required of products meeting ASTM standards, and are discouraged from using coloring, labeling, images, and terms that confuse customers into mistakenly identifying non-compostable products as compostable.

The entity responsible for compliance is: (1) The manufacturer of the product, if the product is sold under the manufacturer's own brand or does not identify the brand; (2) the licensee

of the brand or trademark, if the product is manufactured by a person other than the brand owner; or (3) the person who imports or distributes the product in or into Washington, if the state cannot exercise jurisdiction over the product manufacturer or licensee.

Ecology and local jurisdictions share enforcement authority over these requirements, which must be enforced primarily based on received complaints. Violators may be assessed a civil penalty, which may be appealed to the Pollution Control Hearings Board. As of January 1, 2024, producers of compostable products, including bags, film products, and food service products must submit a declaration to Ecology for a product that is or will be sold or distributed into Washington, and prior to the sale or distribution of a new product sold or distributed into Washington or if the product's method of compliance materially changed from the last declaration.

State Building Code Requirements for Solid Waste. The State Building Code (Code) establishes minimum performance standards and requirements for construction and construction materials in the state, consistent with accepted standards of engineering, fire, and life safety. The Code includes a number of model codes and standards, developed and published by international and national organizations, which are adopted by reference in the State Building Code Act. Model codes and standards adopted include the International Building Code, International Residential Code, and Energy Code. Cities and counties are authorized to amend the Code as it applies within the jurisdiction. Under the Code, local jurisdictions must require that space be provided for the storage of recycled materials, compost, and solid waste for all new buildings. The storage area must be designed to meet the needs of the building's occupants, pickup efficiency, and must be available to occupants and haulers.

**Summary of Bill:** Center for Sustainable Food Management. The Center must convene a work group to address mechanisms to mandate or otherwise improve the rescue of edible food waste from commercial generators, including food service, retail establishments, and processors that generate excess supply of edible food. The work group must consider logistics to phase-in edible food donation programs, incentives, or requirements; food recovery network systems necessary to support increased donation of edible food by commercial generators; asset gaps and food infrastructure development needs; and actions taken, costs incurred, and lessons learned by other jurisdictions. Ecology must select work group members from a list of entities, including local governments, nonprofits, state agencies, trade organizations, and others. Ecology must submit a report to the Legislature by September 1, 2025, with recommendations of the work group.

The Center's duties are expanded to include providing staff support to the work group, and to distribute and monitor new grant programs.

Grant Programs, Awards, and Funding. *Center for Sustainable Food Management Grants.* Ecology, through the Center, and in consultation with WSDA, must develop and administer grant programs to support activities that reduce emissions from landfills and waste-to-

energy facilities through the diversion of organic materials and food waste prevention, rescue, and recovery. Grant program priorities include maximizing greenhouse gas emission reductions, eliminating barriers to the rescue and consumption of edible food that would otherwise be wasted, and preferences certain management options.

Subject to appropriation, grants may be awarded to categories of activities including:

- projects to prevent the surplus of unsold, uneaten food from food businesses or to standardize and improve the operating procedures associated with food donations;
- projects to improve and reduce the transportation of donated foods and management of cold chains across the donated food supply chain, which may not include the purchase or lease of equipment or vehicles using a fuel source other than electricity;
- grant programs to support establishing and expanding wasted food reduction programs to benefit vulnerable communities, which must be developed in consultation with WSDA, the Department of Health, and food policy stakeholders; and
- food waste tracking and analytics pilot project grants.

The categories of grants listed above include eligible applicants, eligible uses of grant funds, and other specified criteria. Ecology may establish additional eligibility criteria or application procedures, and must prioritize grant applications that benefit overburdened communities.

Ecology, through the Center, must develop and administer grant programs to support the implementation of the bill and HB 1799. Eligible grant recipients include businesses that must comply with organic material management requirements, local governments, tribes and tribal government entities, nonprofits, and organic material management facilities. Eligible expenses include education, outreach, technical assistance, indoor and outdoor and transporting and processing infrastructure, and enforcement costs. Ecology may not require a local government to provide matching funds to receive a grant, and must provide assistance to each local government demonstrating eligibility for grant assistance.

*Washington Commodities Donation Grant Program.* WSDA must implement a Washington Commodities Donation Grant Program (donation grant program) to procure Washington-grown produce, grains, and protein otherwise at risk of ending up as food waste for distribution to hunger relief organizations. The donation grant program must rely on existing infrastructure and similar grant programs, give priority to recipient organizations having at least five years of experience coordinating the collection and transportation of donated agricultural products to food donation organizations, and provide for equitable benefits experienced from the program by food producers of varying sizes and types. WSDA must issue grants to one or more nonprofit food cooperatives to acquire food directly from Washington food producers. A grant recipient must report the results of the grant-funded project. The Legislature intends to allocate at least \$25,000,000 per biennia, over multiple biennia, to the donation grant program.

*Waste Not Washington Awards.* The maximum amount of a Waste Not Washington award is increased to \$10,000, in addition to the minimum amount of an award presented to a school having the best recycling program, as measured by the total amount of materials recycled, and a school having the best waste reduction program. The Legislature intends to allocate at least \$1 million per biennium, over multiple biennia, to the Waste Not Washington awards.

Organic Materials Collection Requirements in Certain Jurisdictions. Organics management collection requirements in certain jurisdictions implementing a solid waste management plan are amended to require:

- beginning April 1, 2027: jurisdictions not accepting food waste to provide source-separated organic solid waste collection services at least every other week or 26 weeks annually, and jurisdictions accepting food waste to provide the services every week; and
- beginning April 1, 2030:
  1. the source-separated organic solid waste collection services be provided to customers on a non-elective basis, and to accept food waste, either separated from other organic materials or commingled; and
  2. all persons to use source-separated organic solid waste collection services to discard unwanted organic materials by curbside collection, unless exempted by Ecology.

Ecology may grant a request for up to a five-year waiver reducing the collection frequency requirements for jurisdictions accepting food waste for the collection of dehydrated food waste or to address food waste managed through other methods reducing the volume, odor, or both, of collected food waste.

Jurisdictions and areas exempted from the organics management collection requirements are amended as follows:

- jurisdictions with a total population between 25,000 and 50,000 people where organic solid waste collection services are not offered in any area within the jurisdiction, as of July 1, 2022, are no longer explicitly exempted;
- census tracts in certain jurisdictions with a population density of greater than 75 people per square mile meeting other specified requirements are exempted;
- areas inside of unincorporated urban growth areas for jurisdictions planning under the GMA and meeting other specified requirements are exempted; and
- areas in unincorporated urban growth areas in counties with an unincorporated population of less than 25,000 people are exempted.

Organic Materials Management Requirements for Certain Businesses. When determining which counties and cities preparing independent solid waste management plans are serviced by solid waste facilities providing for organic materials management of certain wastes, Ecology must consider whether the facility has year-round capacity to process and is willing to accept increased volumes of organic materials deliveries. Cities and counties must



provide a written request and supporting evidence to Ecology when seeking a determination that the businesses in the jurisdiction are exempted from arranging organic materials management services. Ecology must confirm the determination. The requirement for businesses generating at least four cubic yards of solid waste per week to arrange for organic materials management services beginning January 1, 2026, is amended to instead, apply to businesses generating 96 gallons of organic material waste per week, unless Ecology establishes a different threshold. Nothing in the business diversion of organic materials provisions prohibits a business from disposing of non-food organic materials that are not commingled with food waste by using the services of an organic materials management facility not accepting food waste.

Collection Bin Requirements. In each jurisdiction planning under state solid waste laws, indoor or outdoor containers provided for collection services must be provided in a color-coded manner to reduce contamination as follows:

- where source-separated recyclable and organic materials are collected separately, a gray or black container may be used only for solid waste collection that is not a source-separated recyclable or organic material;
- where source-separated recyclable and organic materials are not collected separately, a gray or black container may be used for any solid waste;
- a blue container may be used only for source-separated recyclable materials, the contents of which must be transported to an appropriate recycling facility; and
- a green or brown container may be used only for source-separated organic materials and must be transported to an organic materials management facility.

Ecology may adopt rules determining the appropriate containers to be used for materials that could conceivably be placed in multiple containers and whether a different color may be used. Ecology may also adopt rules prohibiting additional waste stream contaminants from being placed in a green, brown, or blue container.

By January 1, 2025, all containers for collection services must bear a clear and conspicuous label on each container or lid specifying what materials are allowed to be placed in the container, which may be satisfied by either a label attached to, or text or a graphic image imprinted on, the container.

The color and identification requirements apply to containers purchased on or after July 1, 2024, however, a jurisdiction or solid waste collection company does not have to replace a functional container:

- with a volume of one cubic yard or less that does not comply with the color requirements until the end of the useful life of the container or January 1, 2036, whichever is sooner; or
- with a volume of at least one cubic yard that existed and was in use as of July 1, 2024, except containers repainted after July 1, 2024, must comply with the color and identification requirements.

A jurisdiction or solid waste collection company may provide a container that is split or divided into segregated sections if the lids comply with the color and identification requirements. Definitions for blue container, green or brown container, and gray or black container are provided.

Food Labeling Requirements. Beginning January 1, 2026, a food manufacturer, processor, or retailer (food businesses) responsible for the labeling of food items manufactured on or after January 1, 2025, intended for human consumption that chooses, or is otherwise required by law, to display a date label communicating a quality or safety date must use one of the following terms on the date label:

- "BEST if used by," "BEST if used or frozen by," or "BB" to indicate the quality date of the food item; or
- "USE by," "USE or FREEZE by," or "UB" to indicate the safety date of the food item.

A person may not sell or offer for sale in the state, a food item for human consumption manufactured on or after January 1, 2025, that is labeled with the phrase "sell by," however, "sell by" dates may be used in a coded format that is not easily-readable by consumers. The restrictions on food item labeling do not prohibit the sale, donation, or use of food after the food's quality date, prohibit a retail food facility from donating a food item not containing such a date, or other specified limitations. The restrictions on date labeling also do not apply to eggs and to certain other types of food regulated by federal law. In addition to these date labeling requirements, perishable packaged foods must comply with other requirements, including that a pull date may include the phrases "pull date" or "pull by," and must not be easily-readable by consumers.

A person that sells food in a retail space exceeding 10,000 square feet must display at least three signs containing specific language educating customers of the date labeling requirements.

WSDA or a local health jurisdiction with delegated authority may enforce the date labeling requirements and may impose a civil penalty of up to \$500 per day for violations. Enforcement must be based primarily on filed complaints. WSDA must provide certain information to violators and issue at least two notices of violation before imposing a penalty.

WSDA, in consultation with Ecology, must provide technical assistance and guidance to food businesses that choose or are required to display a date label on a food item, upon request. WSDA, in consultation with Ecology and the Department of Commerce, must:

- provide education and outreach to inform food businesses and consumers about the date labeling requirements; and
- work with food businesses and other organizations to create educational elements.

Plastic Produce Stickers and Product Degradability Requirements. Beginning January 1,

2028, a person may not sell or distribute in or into Washington plastic produce stickers, or products with plastic produce stickers, that do not meet ASTM Standard D6400 or D6868. These requirements:

- do not apply to produce stickers comprised only of wood or a fiber-based substrate containing greater than 98 percent fiber and no plastic or polymer additives or coatings; and
- may only be enforced against the first person to sell or distribute the sticker or product in or into Washington, but the person may be required to identify the appropriate individual.

One option for a product labeled as compostable to be sold, offered for sale, or distributed for use in Washington by a producer is amended to require the product be comprised only of wood, and if containing a fiber-based substrate, have greater than 98 percent of fiber and no plastic or polymer additives or coatings.

The prohibition of a producer of plastic film bags sold, offered for sale, or distributed for use in Washington not meeting the applicable ASTM standard specifications against using color schemes required of ASTM-compliant products does not prevent the use of green, brown, or beige stripes that are smaller than one-quarter inch wide and used as visual aids; and green, brown, or beige lettering or logos used solely for brand identity purposes. The prohibition does prevent the use of botanical motifs.

A producer may only label a product as being home compostable if the product has been tested and meets ASTM standards for industrial composting settings, the information is verified by a third-party and supported by scientific evidence, and the product is appropriately labeled.

A city or county that chooses to enforce the plastic product degradability requirements must notify Ecology with a letter of intent stating certain information regarding enforcement in the jurisdiction.

The definition of producer in plastic product degradability laws is amended to exclude a produce sticker from the list of products for which a producer is responsible for compliance under those laws, and if a product is manufactured by a person other than the brand owner, the brand owner is now assumed to be the producer unless a written brand license or trademark agreement is provided to Ecology showing the responsibility lies with the licensee of the brand or trademark.

Compost Reimbursement, Procurement, and Training. *Compost Reimbursement Program.* Eligible costs for reimbursement under the Compost Reimbursement Program are no longer limited to purchasing and using compost from facilities with solid waste handling permits and may include purchasing and using compost containing vegetative or food waste feedstocks. To be eligible for reimbursement, compost must comply with certain Ecology requirements. During eligibility review, each farming operation must provide an estimated

incurred cost associated with the compost and other eligible purchases. When determining eligibility and a maximum grant request amount, Ecology must use this estimate cost plus an additional 25 percent. The maximum grant amount is the lesser of 50 percent of the Ecology-calculated grant request amount or \$20,000. A farming operation is not eligible to receive reimbursement for compost products that were not purchased from a permit-exempt facility that composts vegetative or food waste feedstocks.

*Compost Procurement.* Each city or county adopting a compost procurement ordinance must submit a report to Ecology regarding the previous year's activities by March 31, 2025, and each March 31st. The report must include the facility or facilities used for processing organic material diverted throughout the year.

*Compost Facility Operator Training.* Ecology must amend its rules adopted under solid waste management laws that establish training requirements for compost and anaerobic digester facility operators to require that facility managers and supervisors annually complete at least ten hours of organic materials management training from external organizations.

Other. Agricultural, yard, or organic material waste known or likely to be contaminated with clopyralid, aminopyralid, or other similar herbicides, as identified by Ecology, must not be provided to an organic materials management facility for handling as organic or yard waste and may not be used by a facility as an input or feedstock.

Local jurisdictions may amend the Code, as applied to the jurisdiction, to provide for the storage of solid waste by requiring multi-family residential buildings to:

- provide adequate space for the colocation of organic material waste and recycling collection containers with garbage containers, or in the absence of colocation, requiring signage notifying residents of where those containers are located;
- identify organic material waste collection containers with appropriate and accurate signage and color to differentiate between containers; and
- distribute annual waste sorting educational materials to all residents.

Legislative intent language and a severability clause are included.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2024.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.