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## Environment & Energy Committee

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### HB 1071

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

**Sponsors:** Representatives Fey, Leavitt, Walen, Bronoske, Reeves, Barkis, Waters, Callan, Thai, Berg, Low, Schmidt, Rule, Goodman, Pollet, Lekanoff and Salahuddin.

#### Brief Summary of Bill

- Requires producers to register and report to the Department of Ecology (Ecology) regarding their sale and distribution in Washington of certain paper products and packaging (covered PPP).
- Requires Ecology to carry out a recycling system needs assessment related to covered PPP, and to publish and to periodically update lists of recyclable materials suitable for curbside or drop-off collection.
- Requires Ecology to establish an advisory committee with specified duties, including the formation of a task force to make recommendations on misleading recyclability claims.
- Makes changes to minimum postconsumer recycled content (PCRC) requirements for certain plastic packaging and products, including requiring additional types of plastic packaging to meet PCRC requirements.
- Establishes criteria and processes for the Utilities and Transportation Commission to approve solid waste collection rate discounts for low-income persons.

**Hearing Date:** 1/16/25

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

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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.*

## **Background:**

### Solid Waste Management in Washington.

Under the state's solid waste management laws, local governments are the primary government entity responsible for implementing state solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws. Ecology is responsible for working cooperatively with local governments as they develop their local solid waste management plans. County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element, and a recycling contamination reduction and outreach plan. Under state laws addressing the local planning and management of solid waste, a waste management hierarchy is established for the collection, handling, and management of solid waste and prioritizes, in descending order: (1) waste reduction; (2) recycling, with source separation of recyclable materials as the preferred method; (3) energy recovery, incineration, or landfill of separated waste; and (4) energy recovery, incineration, or landfill of mixed municipal solid wastes.

The Utilities and Transportation Commission (UTC) regulates private service providers that transport solid waste, garbage, and recyclables from residential sites. The certificate to transport garbage and recyclables sets the geographic areas in which the service provider is authorized to collect waste. Cities and towns have the authority to provide their own solid waste collection services or to contract for solid waste collection services, including collection of source-separated recyclable materials. Counties may contract for the collection of source-separated recyclable materials in unincorporated areas of the county. Solid waste collection services provided or contracted by cities and towns or contracted by counties are not subject to UTC regulation. Materials collected for recycling are transported to material recovery facilities, which receive, compact, repackage, or sort materials for the purposes of recycling. Counties may request the UTC to approve discounted solid waste collection rates, charges, or services for low-income services that have been adopted in the county's solid waste management plan; lost revenues from discounts must be included in the solid waste collection company's cost of service and recovered in rates to other customers.

### Plastic Labeling.

State law categorizes the following types of plastic resin:

1. polyethylene terephthalate (PETE);
2. high-density polyethylene (HDPE);
3. vinyl (V);
4. low-density polyethylene (LDPE);
5. polypropylene (PP);
6. polystyrene (PS); and
7. Other.

### Recent Plastics and Packaging Study.

In December 2023, Ecology submitted a report, mandated by a 2023 Operating Budget proviso, related to consumer packaging and paper materials to the Legislature from a contracted consultant. The report recommends the highest achievable recycling, reuse, and source reduction performance rates for Washington under four policy scenarios involving a combination of policies, including:

- scenarios that include an extended producer responsibility or product stewardship program for packaging and paper products;
- a deposit return system for beverage containers;
- the establishment of new postconsumer recycling rate targets for plastic products; and
- prohibitions on the use of false recyclability claims on product labels.

The December 2023 report also reported the surveyed input of Washington residents on the state's recycling system.

### Minimum Recycled Content Requirements.

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

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

Beginning in 2025, Ecology may annually review and determine whether to adjust minimum PCRC requirements for the following year. Ecology may do so for a type of container within a category of covered PPP after considering market conditions, recycling rates, and other specified factors. Manufacturers of products that are subject to PCRC requirements, who do not achieve the PCRC requirements, are subject to penalties. Penalties are calculated based upon the amounts in pounds in aggregate of virgin plastic, PCRC plastic, and other plastic used by manufacturers to produce covered containers, at a rate of 20 cents per pound of plastic below the amount of PCRC plastic needed to achieve minimum PCRC requirements

## **Summary of Bill:**

### Producer Registration and Reporting on Paper Products and Packaging.

Producers of covered plastic packaging and paper products (covered PPP) must register with Ecology, beginning January 1, 2026. Producers are defined to include specified entities associated with covered PPP, but do not include government entities, nonprofit organizations, or entities that sell, distribute, or import de minimis volumes of covered PPP.

Packaging is defined to include various materials, including single-use items that facilitate food or beverage consumption.

Covered PPP does not include materials intended for long-term use associated with durable products; materials used to package federally regulated pesticide products; medical devices, drugs, dietary supplements, vaccines, or biologic or animal biologic drug products; reusable or refillable propane gas containers; paint containers; packaging to contain hazardous or flammable products; bound books; newspaper, or paper used for building construction, and paper that could become contaminated through foreseeable uses.

Beginning April 1, 2027, producers must begin submitting annual reports to Ecology that include, by material category, the volume in pounds of covered products sold or distributed into Washington during the preceding calendar year. National data allocated on a per capita basis for Washington may be submitted if a producer demonstrates to Ecology that state-level data are not feasible.

The registration and reporting of producers must include specified information and may occur through a third-party representative that registers on behalf of producers. Producers that submit confidential information to Ecology may request that the information be only for the confidential use of Ecology. Ecology's Director may consider this request and must grant the request that the information remain confidential if it is not detrimental to the public interest and is otherwise in accordance with Ecology's policies.

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

### Recycling Goals, Needs Assessment, and Statewide Lists.

A goal is established for Washington to achieve a 65 percent recycling rate for covered PPP. Ecology must track progress towards this goal and make progress public. This goal must be used to inform the statewide needs assessment.

By October 1, 2026, Ecology must develop two lists:

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

Ecology may identify additional materials for inclusion on these lists, or remove materials for inclusion on these lists, based on consultation with the stakeholder advisory committee appointed by Ecology, and after considering specified factors. Ecology must review and update these lists by 2031 and at least every five years afterwards.

Ecology must complete a statewide needs assessment carried out by a third-party consultant by October 1, 2027. Specified processes and sources of input must be considered and followed in scoping the needs assessment. The needs assessment must use the recycling rates from Ecology's 2023 report to the Legislature required by the 2023 Operating Budget proviso, focused on covered PPP collected from residences and included on the list adopted by Ecology in 2026. Each solid waste planning jurisdiction must be consulted prior to the completion of the needs assessment. The needs assessment must—for each solid waste planning jurisdiction—evaluate the capacity, costs, gaps, and needs relative to the achievement of performance rate goals for specified aspects of the recycling system, including types of recycling services and methods and infrastructure for covered PPP, education and outreach, and collection, transport, and processing capacity. The needs assessment must also compile a number of other specified categories of information related to the costs and operations of the state's recycling system.

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

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

Producers that are in violation of registration and reporting requirement are subject to civil penalties of up to \$1,000 per day. Ecology must provide at least two notices of violation prior to issuing a penalty. Penalties are appealable to the Pollution Control Hearings Board.

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

committee, and must establish a truth in labeling task force as a subgroup of the advisory committee. The truth in labeling task force must study and evaluate misleading or confusing claims regarding the recyclability of products and make recommendations to the Legislature by June 1, 2026.

### Postconsumer Recycled Content.

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

- polypropylene tubs, which must meet:
  - For tubs not in direct contact with food or edible products, 10 percent PCRC from 2031 through 2035, and 30 percent PCRC requirements beginning in 2036.
  - For tubs in direct contact with food or edible products, 10 percent PCRC from 2035 through 2038, and 30 percent PCRC beginning in 2040.
- single-use plastic cups made of:
  - polypropylene, which must meet 15 percent PCRC requirements in 2032, and 25 percent beginning in 2034.
  - PETE and polystyrene, which must meet 20 percent PCRC requirements from 2034 through 2035, and 30 percent PCRC beginning in 2036; and
- PETE thermoform plastic containers, which include PCRC standards of:
  - Packaging for consumable goods must meet 10 percent PCRC from 2031 through 2035 and 30 percent PCRC beginning in 2036.
  - Packaging for consumable goods in direct contact with food or edible products must meet 10 percent PCRC from 2035 through 2039 and 30 percent PCRC beginning in 2040.
  - Packaging for durable goods must meet 30 percent PCRC beginning in 2034.

Ecology may extend the dates applicable to any of the new PCRC requirements for thermoform plastic containers, single-use plastic cups, and polypropylene tubs by up to five years for all producers if it determines that there is an inadequate availability of recycled material or a substantial disruption of recycled material supply.

A producer may pay a \$1,000 waiver fee and apply to Ecology for a waiver from the new PCRC requirements for thermoform plastic containers, single-use plastic cups, and polypropylene tubs. Ecology may grant a waiver upon finding that compliance is not technically feasible, there is inadequate availability or a substantial disruption in the supply of recycled material, or that compliance with PCRC requirements would be in conflict with federal law or regulations. Registration and annual reporting logistics that apply to existing PCRC requirements for plastic products will apply to the new plastic products subject to PCRC requirements.

Ecology must ensure that PCRC rules for all products subject to PCRC requirements consider the guidelines and do not conflict with the regulations issued by the federal Food and Drug Administration and Department of Agriculture. Ecology may not impose PCRC requirements



that are in direct conflict with a federal law or regulation, or on medical devices, drugs, or dietary supplements.

Changes to existing PCRC requirements are made, including:

- specifying that dairy milk containers are a beverage container subject to PCRC requirements;
- amending the types of nutritional formula beverages that are exempt from PCRC requirements for beverage containers;
- specifying that plastic beverage container caps and lids are subject to PCRC requirements, beginning in 2026;
- specifying that plastic carryout bags are not subject to the PCRC requirements generally applicable to plastic trash bags; and
- changing the income thresholds below which a business qualifies as a de minimis producer not subject to PCRC requirements.

#### Low-Income Solid Waste Collection Rate Discounts.

A solid waste collection company, in addition to a county, may request that the UTC approve rates, charges, or services at a discount for low-income customers, and such a request is no longer required to be part of the adopted county solid waste management plan. Additional structure is added to the low-income discounts that the UTC may approve, including:

- Low-income discounts must be provided in coordination with community-based organizations in a solid waste collection company's service territory.
- Eligibility for a low-income discount rate must be established upon verification of a low-income customer's receipt of any means-tested public benefit.
- Low-income discounts may only be received by individuals whose income does not exceed levels defined by the UTC or the Department of Commerce, which may not exceed the higher of eighty percent of area median household income or two hundred percent of the federal poverty level.
- Solid waste collection companies that offer low-income discounts must conduct outreach efforts to eligible customers that meet specified criteria.
- Customers eligible for a solid-waste collection discount must receive the service on demand, and may not be charged for initiating or terminating a low-income discount rate.

The UTC may adopt rules or guidance related to low-income discounts for solid waste collection company customers.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

passed.