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## Environment & Energy Committee

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### HB 1204

**Brief Description:** Concerning the responsible management of plastic packaging.

**Sponsors:** Representatives Peterson, Doglio, Frame, Slatter, Macri and Goodman.

#### Brief Summary of Bill

- Requires producers of plastic packaging to participate in a stewardship organization that implements a Plan approved by the Department of Ecology.
- Establishes collection, end-of-life management, education and outreach, litter collection, and program funding requirements for the stewardship program.
- Establishes minimum postconsumer content requirements for rigid plastic containers, plastic bags, and plastic collection bins sold or distributed in Washington.

**Hearing Date:** 2/7/19

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

#### Background:

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 (ECY) is responsible for working cooperatively with local governments as they develop their local solid waste management plans. County and city comprehensive solid waste management plans must contain certain elements, including a waste reduction and recycling element that includes waste reduction strategies, recycling strategies, and source separation strategies. Cities and counties determine which materials may be accepted for curbside recycling in each jurisdiction, and whether collected recyclable materials are collected in commingled containers or containers that separate materials based on type or source.

Facilities that manage, generate, store, or otherwise handle solid wastes are required to obtain a solid waste permit from the local jurisdictional health department, which are reviewed by the ECY. All transporters of recyclable materials must register with the ECY. The Utilities and

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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.

Washington has established product stewardship programs for electronic products, pharmaceuticals, photovoltaic solar panels, and light bulbs that contain mercury (such as compact fluorescent lights). These 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.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the ECY and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

### **Summary of Bill:**

By June 1, 2021, each producer of plastic packaging must ensure that a plan is submitted to the Department of Ecology (ECY) on the producer's behalf. Beginning January 1, 2022, producers of plastic packaging must participate in a plastic packaging stewardship organization with a plan approved by the ECY. Plastic packaging is defined to include packaging made at least partially from plastic and that:

- is used to protect, contain, or transport commodities or products;
- is attached to a commodity or product; or
- is a plastic bag or plastic food service product, including utensils and other specified items associated with food or beverage service.

In descending order of priority, a producer of plastic packaging is a person that:

- has legal ownership of a brand to which plastic packaging is applied;
- is the first importer into Washington of a product to which plastic packaging has been applied;
- sells at retail a product to which plastic packaging has been applied; or
- otherwise elects to assume compliance responsibility for a product.

A producer of plastic packaging that is not participating in a stewardship organization with an approved Plan may not sell, offer for sale, or distribute plastic packaging for use in Washington. Producers with less than one million dollars of annual revenue, that generate less than one ton of plastic packaging supplied to residents each year, or that operate a single point of retail sale are exempt from the requirement to participate in a stewardship organization with an approved Plan. Retailers that are not producers are not required to participate in a stewardship organization.

### Plastic Packaging Stewardship Plan.

Stewardship organizations must submit a plan (Plan) to the ECY for approval that describes the elements of the stewardship program (Program), including:

- a list of participating producers and brands;

- a description of the plastic packaging categories covered by the program, supplemented by baseline data, program goals of capturing 80 percent of plastic categories into assigned best management practices for the category based on a waste management hierarchy;
- a process using categories to determine the amount of packaging sold by participating producers;
- an analysis of plastic packaging litter found in public places, by category or brand;
- an analysis of overall amounts of packaging in the waste stream that contain more than negligible amounts of food residue or waste;
- a detailed budget and funding mechanism for the program;
- a description of plans to work with government entities and others to fund local infrastructure investment, business development, and job creation;
- a description of plans to work with and fund groups that collect plastic packaging litter;
- a description of plans to work with and compensate organic waste collection programs and commercial compost facilities to prevent and remove plastic packaging contamination;
- a description of how the stewardship organization will provide incentives for Program members to reduce litter, improve produce reuse and recyclability, and reduce toxic substances in products; and
- a description of processes for the consideration and establishment of innovative means of plastic packaging collection.

A public website with Plan information must be provided by the stewardship organization. Plans must be updated two years after the Program begins, and once every five years after the initial update. Plans must be amended when the Program fails to provide services in each county of Washington or meet other significant Plan and Program requirements. The stewardship organization must notify the ECY of modifications to the Program, and must propose a plan amendment if the ECY determines that the modification is significant. Timelines and processes for the ECY review and approval of Plan and Program amendments are established.

Plastic Packaging Stewardship Program: Collection, Litter, Outreach, and Advisory Committee. Stewardship organizations must provide for widespread, convenient, and equitable access to plastic packaging collection opportunities, and may rely on a range of means of collection. In certain circumstances, the program's collection mechanisms must include curbside or multifamily recycling collection services provided by municipal or tribal programs, contracted programs, and Utilities and Transportation Commission (UTC)-regulated companies, where those services exist. Curbside collection services may only be provided by municipal programs, municipal contracted programs, and UTC-regulated companies. A stewardship program must work with and fully compensate municipalities, solid waste companies, and others to use existing collection programs, and to direct collected plastic packaging to the most appropriate management alternatives.

The Program must meet certain standards for the management of plastic packaging by processing facilities, including that:

- collection means and systems must direct plastic packaging to facilities that are effective in sorting and reprocessing plastic packaging;
- exported plastic packaging is managed in an environmentally sound and socially just manner, including through the use of tracking, verification, and reporting measures for recycled plastics;

- plastics are sorted to specific resin type prior to export to certain countries, and are not exported as mixed-plastics;
- incentives make certain that plastic packaging is subject to a waste management hierarchy of reduction, reuse, mechanical recycling, chemical recycling, and energy recovery, incineration, or landfilling; and
- the recycling of plastic packaging into the same category of product as the original is prioritized over recycling that results in products that are lower in quality, functionality, or value.

The Program must prevent plastic packaging from becoming litter, including through working with producers to reduce litter through product design and innovation. The Program must provide for the collection of littered plastic packaging from public places and freshwater and marine environments, including through funding and working with groups that collect plastic packaging litter.

The Program must provide outreach, education, and communications in order to achieve Program goals and to prevent contamination by plastic packaging in other management systems. Education and outreach activities must be provided to specified groups and through specified media. An evaluation of the effectiveness of education and outreach activities must occur prior to periodically-required Plan updates.

The stewardship organization must establish an advisory committee representing a variety of specified public and private entities. The advisory committee must meet at least once per year and must be consulted by the stewardship organization on Plan updates and amendments. The stewardship organization must also periodically provide a process to receive comment from other stakeholders.

#### Plastic Packaging Stewardship Program: Program Funding Levels and Structure.

Producers must pay all administrative and operational costs to establish and implement the Program. These costs are specified to include statewide collection of plastic packaging and the full costs for services provided by municipal, municipal-contracted, and UTC-regulated programs.

Ten percent of the Program's expenditures must be used for the recycling market and infrastructure development in Washington. Ten percent of the Program's expenditures must be used to clean up litter and remove plastic packaging contamination at compost and organic material facilities. Funding for other activities must be set so as to be sufficient to achieve program goals for plastic packaging collection. The funding level must be no less than \$1 per Washington resident per year, adjusted annually for inflation. A fiscal reserve must be established by the Program.

Stewardship organizations must establish program participation charges for producers that are structured to reward waste reduction and recycling compatibility innovations and best practices, while discouraging designs and practices that increase plastic packaging management costs. The stewardship organization must charge producers relatively higher or lower amounts based on specified characteristics of packaging.

#### Department of Ecology Oversight.

The ECY is assigned responsibility for reviewing and approving Plans of stewardship organizations within. Timelines for review and public comment on Plans are specified. The ECY may impose civil penalties of up to \$1,000 per day for violations, and up to \$10,000 per day for intentional, knowing, or negligent violations. Penalties are appealable to the Pollution Control Hearings Board.

Stewardship organizations must reimburse the ECY's costs. The ECY must annually determine its costs for administering and enforcing plastic packaging stewardship program. The ECY must make proposed annual costs available for public review and comment. If there are multiple Programs, the ECY's costs must be divided proportionately between stewardship organizations based on the percent of total plastic packaging covered by each organization. An account is created for receipts from stewardship organizations.

Beginning April 1, 2023, stewardship organizations must submit annual reports to the ECY which include specified information about the Plan and Program, including the Program's progress towards meeting established plastic category best management practice goals and on producer compliance with recycled product content requirements. The ECY may request information of stewardship organizations that is in addition to the annual reporting requirements. The ECY may also adopt rules to implement, administer, and enforce plastic packaging stewardship requirements.

#### Recycled Product Content Requirements.

Minimum postconsumer plastic packaging material content standards are established for the following products in order for the products to be sold, offered for sale, or distributed for use:

- beginning January 2023, rigid plastic packaging containers must contain 25 percent postconsumer plastic packaging material;
- beginning January 2023, plastic film bags for certain uses must contain 25 percent postconsumer plastic packaging material; and
- beginning January 2020, plastic collection bins must contain 25 percent postconsumer plastic packaging recycled content.

Certain exemptions to these minimum postconsumer content requirements are created.

Stewardship organizations must establish and implement a postconsumer recycled content trade mechanism, reporting, and verification process. Through the mechanism, producers must be able to buy, sell, or trade credits to achieve postconsumer content compliance obligations. Producers that exceed minimum postconsumer recycled content in covered products may sell or trade credits to other producers, or bank and apply credits to their own products.

#### Other Provisions.

Local governments that experience reduced or avoided costs as result of the reallocation of the costs of managing plastic packaging to stewardship organizations are encouraged to invest their savings in waste prevention programs and reduced rates.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Available.

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