

SENATE BILL REPORT

SB 5397

As of January 23, 2019

Title: An act relating to the responsible management of plastic packaging.

Brief Description: Concerning the responsible management of plastic packaging.

Sponsors: Senators Rolfes, Carlyle, Darneille, Saldaña, Hasegawa, Hunt and Kuderer.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/24/19, 1/31/19.

Brief Summary of Bill

- Requires producers of plastic packaging to participate in a product stewardship organization in order to sell or distribute their products in Washington State.
- Specifies and establishes requirements for product stewardship.
- Provides recycled content requirements for rigid plastic and plastic bags.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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Background: Local governments have the primary responsibility to manage solid waste. Each county must prepare a coordinated, comprehensive solid waste management plan and adopt regulations or ordinances to implement the plan. The plan must include solid waste handling, recovery, and recycling that can be integrated into the comprehensive county plan. The waste reduction and recycling element must include waste-reduction and source-separation strategies as well as the levels of service provided.

The Department of Ecology (DOE) reviews and approves locally issued permits and solid waste management plans, and defines minimum functional standards for all types of solid waste facilities. The regulations must address storage, collection, transportation, and treatment.

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

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. All transporters of recyclable materials or recyclables must register with DOE.

Cities and counties implement their solid waste plans and determine materials that may be accepted in curbside recycling. The majority of local governments and solid waste collection companies collect commingled recycled materials in a provided single cart. Depending on the service provider, several bins may be provided to customers requiring recyclables to be separated by type or source.

All collected materials for recycling are transported to a materials recovery facility (MRF). At MRFs, collected materials are sorted and processed into bales of different types of recyclables. The MRF readies the bales of recyclable materials for shipment and sale to a secondary processor or end-user. Materials that are not recyclable are sent to the landfill.

In Washington, product stewardship requirements are established for mercury containing light, photovoltaic modules, and electronic products. Central to product stewardship are certain principles including:

- producers are responsible for their products throughout all lifecycle stages;
- producers are responsible for the administration and financing of programs for end-of-life management of their products; and
- producer programs are transparent and accountable.

Summary of Bill: The requirements for plastic packaging product stewardship are established and specified. Beginning January 1, 2022, a producer of plastic packaging must participate in a plastic packaging stewardship organization in order to sell, offer to sell or distribute plastic packaging in Washington. A producer is exempt from participating in a plastic packaging stewardship organization if the producer generates less than \$1 million in annual revenues, supplies less than 1 ton of plastic packaging to Washington residents per year, or operates as a single point of retail and is not part of a franchise.

Producers. A producer or group of producers must pay all administrative and operational costs to establish and implement a product stewardship program. The producers are responsible for financing the responsibilities of stewardship organization and plan. Producers must cover the full costs for municipal programs and services and UTC regulated services, including sorting, processing, and marketing. Producers must ensure that 10 percent of program expenditures are dedicated to market and recycling infrastructure development. A minimum of 10 percent of overall program expenditures must be provided to clean up litter in public places and freshwater and marine environments and to remove plastic contamination from compost and organic materials.

Stewardship Organization. A stewardship organization must provide widespread, convenient, and equitable access to collection of participating producers' plastic packaging in all areas of the state, including rural and island communities.

The stewardship organization must set charges for participating producers sufficient to fully cover the costs to implement the stewardship program and to provide financial incentives to

reward producers for innovations and best practices. The charges may be variable based on costs to properly manage plastic packaging. A stewardship organization may petition DOE to end required incentives when they are irrelevant or no longer needed.

Plastic packaging collection options must include existing municipal and UTC regulated curbside or multifamily recycling collection services if:

- the plastic packaging is suitable for curbside or multifamily recycling collection, can be effectively sorted, and is not handled through a deposit and return or buyback system; and
- providers of services agree to the product stewardship compensation agreement.

Only curbside collection for disposing of plastic packaging may be provided only by UTC regulated services or municipal programs.

A stewardship organization must establish and implement a postconsumer recycled content trade mechanism for producers. The trade credit mechanism must allow producers to buy, sell, and trade credits to meet recycled content requirements. The trade credit mechanism must include processes for verification and reporting so that the stewardship organization and DOE are able to verify a producer's compliance.

An annual report must be submitted by the stewardship organization that includes a description of the plan elements, a description of the program's achievements in reaching recycling and litter reduction goals, as well as baseline information on types and brands of plastic litter.

Stewardship organizations must establish an advisory committee comprised of interested stakeholders. The advisory committee must meet at least once per year to provide comments on the stewardship plans and plan amendments. Membership is specified and reimbursement for certain participating members is required.

Stewardship Plan. Producers must ensure that the stewardship organization submits a plan to DOE. The plan must describe the management and collection of plastic packaging and must be updated two years after implementation of the stewardship program and every five years thereafter. Stewardship plans must be amended when the stewardship program fails to provide services in each county of the state or when it does not meet significant plan or program requirements. A stewardship organization must submit an amended plan to DOE within 90 days. The amended plan must address modifications to meet program requirements.

The plan information must include:

- a budget and description of the funding mechanism to demonstrate sufficient funding to implement the stewardship program;
- baseline data of current management practices;
- goals for progressively managing plastic packaging;
- comprehensive analyses of the types and amount of plastic litter; and
- descriptions of how the stewardship organization will work with state agencies and local governments to fund infrastructure needs, and litter collection, and compensate organic waste collection programs and compost facilities.

Stewardship Program. A stewardship program must implement the stewardship plan. A stewardship program must work with and fully compensate municipalities, solid waste collection, sorting and reprocessing companies and must:

- ensure that plastic packaging is directed to the most appropriate management alternative and to facilities that are effective in sorting and reprocessing plastic packaging into a form ready for remanufacture into a new product prior to shipment;
- ensure exported plastic packaging is sorted by specific resin type and sent to facilities operating with human health and environmental standards equivalent to those required in the U.S.;
- prevent plastic packaging from becoming litter and collect litter from public places and freshwater and marine environments;
- fund and work with groups that collect litter;
- provide outreach, education, and communications regarding reuse, collection and prevention of litter of plastic packaging.

A waste management hierarchy is established for plastic packaging. Management of plastic packaging is prioritized as: (1) prevention and waste reduction; (2) reuse; (3) mechanical recycling; (4) chemical recycling; (5) energy recovery, incineration, or landfill. Stewardship organizations and programs must align best management of plastic packaging with the waste management hierarchy.

Recycled Content Requirements. Beginning January 1, 2023, only rigid plastic packaging containers and compostable plastic film bags with a recycled content requirement of at least 25 percent may be sold or distributed in Washington. Producers of these products that do not meet the recycled content requirements must fulfill their obligation through the recycled trade content mechanism. Exemptions are specified.

Beginning January 1, 2020, plastic collection bins must be made of 25 percent recycled content. Existing municipal contracts in place prior to August 1, 2019, are exempt until expiration or renewal. Producers of plastic bins must provide, upon request by DOE, a municipality, a stewardship organization, or a solid waste collection provider, written documentation or certification showing the bins meet the recycled content requirement.

Department of Ecology. Annually, DOE must determine its costs for administering, implementing and enforcing plastic packaging product stewardship programs. Each stewardship organization must be notified by April 1st of the fiscal year prior to the program implementation. The costs must be divided proportionately between stewardship organizations based on the participating producers' percent of plastic packaging sold into Washington. By January 1, 2022, each stewardship organization must submit \$200,000 to DOE to cover anticipated initial program costs and rulemaking.

All stewardship plans must be reviewed by DOE within 120 days of receipt. DOE must notify the stewardship organization whether or not the submitted stewardship plan is approved. Approved plans must be made available for review and comment on DOE's website for 30 days. DOE must make a determination on an amended plan within 90 days of receipt.

DOE is authorized to adopt rules as necessary for implementation, administration and enforcement of plastic packaging product stewardship. DOE must adopt rules for plastic packaging plan content and for the process used to determine stewardship organizations proportionate costs.

DOE may assess a civil penalty of up to \$1,000 per day per violations of this chapter. Persons who intentionally, knowingly, or negligently violate this chapter may be subject to a civil penalty of up to \$10,000 per violation per day. Penalties may be appealed to the Pollution Control Hearing Board.

Local governments and service providers are encouraged to adjust rates and invest in waste prevention programs when their costs are reduced as a result of plastic packaging stewardship programs. All UTC regulated services must report payments received from product stewardship organizations or relevant cost reductions due to plastic product stewardship programs.

The responsible plastic packaging stewardship account is created to receive all receipts by DOE.

Appropriation: None.

Fiscal Note: Available.

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

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