

SENATE BILL REPORT

SB 5397

As of February 27, 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, 2/07/19 [DPS-WM, w/oRec, DNP].

Ways & Means: 2/25/19.

Brief Summary of Substitute Bill

- Requires Department of Ecology (DOE) to hire a third party independent contractor to conduct a study on the management and disposal of plastic packaging in the state and provide a report with findings and recommendations to the Legislature by December 31, 2020.
- Requires DOE to work with stakeholders to develop a product stewardship plan and implement a program for a plastic packaging product stewardship program with a goal to establish the program by January 1, 2023.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5397 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Lias, McCoy, Nguyen and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Brown and Short.

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.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jed Herman (786-7346)

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.

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.

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.

The revenues from the litter tax are allocated from the Waste Reduction, Recycling, and Litter Control Account to DOE. DOE is the coordinating agency between organizations looking to assist in waste reduction, litter control, and recycling, as well as with state agencies, including the Department of Corrections and DOT, and local governments that receive funding for litter control and recycling activities. In addition, DOE employs teens through the Ecology Youth Corps to collect litter from highways, parks, and other public

areas. DOE must develop criteria for evaluating the effectiveness and efficiency of the participating agencies' litter collection programs.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Second Substitute): DOE must evaluate and assess the amount and types of plastic packaging sold into the state as well as its management and disposal. Producers, stakeholders and solid waste management service providers must be consulted when the evaluation is being conducted. DOE must hire a third party independent consultant to conduct the evaluation and assessment.

By December 31, 2020, DOE must submit a report to the Legislature with findings and recommendations based on the evaluation and assessment of management and disposal of plastic packaging. The report must include an assessment of the:

- amount and types of plastic packaging coming into the state;
- full cost of managing plastic packaging waste, including costs to ratepayers, businesses and others;
- final disposition of all plastic packaging sold into the state;
- costs and savings to all stakeholders in product stewardship programs implemented in other cities and solid waste companies.
- needed infrastructure to implement a product stewardship program; and
- existing stewardship organizations and databases useful to develop a program in Washington State.

The report must include a compilation of all of the programs in the state currently managing plastic packaging, including end-of-life management and litter and contamination cleanup, and existing studies of the final disposition of plastic packaging and materials recovery facilities residual composition. In addition, a review of industry efforts and innovations to reduce, reuse, and recycle plastic packaging must be included in the report.

Plastic packaging is a designated product requiring product stewardship. Producers or their designated stewardship organization, must consult with DOE, local governments, and regulated and non regulated solid waste service providers to develop and implement a plastic packaging product stewardship program. Producers working with DOE, service providers, and stakeholders must establish, finance, and fund a product stewardship program by January 1, 2023. The product stewardship program must include at a minimum:

- progressive management of plastic packaging to increase rates of recycling and reduce solid waste;
- a goal to reduce generation and disposal of plastic by at least 5 percent annually;
- strategies to manage and reduce life-cycle impacts of products and packaging, including ways to improve designing, packaging and distributing; and
- education and outreach activities.

Producers or their designated stewardship organization must take into consideration the report on the assessment of management and disposal of plastic packaging when developing the plastic packaging product stewardship program.

Beginning January 1, 2024, producers may not sell or distribute into Washington covered products unless the producer is participating in a product stewardship program.

DOE must determine its anticipated costs for rulemaking and initial program costs. The costs must be proportionately allocated to producers of covered products. Producers must submit their share of the anticipated costs by January 1, 2022.

By June 1, 2022, DOE must adopt rules necessary to implement and enforce a product stewardship program. The rules must include requirements for plan content, reporting, timeframes for plan submissions and approvals, and fees sufficient to cover the costs of administering the program.

A plastic products stewardship account is created for all receipts of the product stewardship program. Money in the account may only be spent after appropriation and for the purposes of this act.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Strikes all requirements for plastic product stewardship.
- Intends that a plastic product stewardship program be developed and implemented by January 1, 2022.
- Requires DOE to hire a third party independent contractor to conduct a study on the management and disposal of plastic packaging in the state and provide a report with findings and recommendations to the Legislature by December 31, 2019.
- Requires DOE to work with stakeholders to develop a product stewardship plan and implement a program for plastic packaging product stewardship program with a goal to establish the program by January 1, 2022.
- Makes the requirements of the bill subject to the availability of the Waste Reduction, Recycling, and Litter Control Account funding.

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.

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: The amount of plastic produced has gone up 20 times. Explosion in the use and production of plastic. The consumers are burdened with plastic. This bill provides a great solution. It follows other successful programs. We have collected thousands of pounds of marine debris the vast majority of which is plastics. We need to address plastics at its source. British Columbia is handling these same plastics responsibly and they are being sorted by resin type. They have domestic markets as a result.

Producers of plastic production globally see the value of having the packaging for their product be recyclable and having recycled content in recent months companies such as Coca-Cola and you know lever team a few have announced a sustainability goals that includes a commitment to the use of large percentages of or cycle plastic content in their packaging. This would create a consistent and comprehensive system for the whole state. It will be big and complex but that is what we need to deal with the magnitude of this problem. We need to address the source and turn off the valve as our oceans are overflowing with plastic.

CON: We are a strong supporter of the producer responsibility model for manufacturers. However, we are not sure whether or not this model would be effective with plastic packaging. We prefer a stakeholder group to come up with some creative solutions and to determine the issues and problems are during the interim. We recognize the need to reduce plastics and improve recyclability but this bill is overly broad in scope and places an enormous impact on companies even those that are taking proactive steps to reduce the environmental impacts of their packaging.

OTHER: They types of plastic packaging for food products and packaging around food are very different and need to be safe and meet health codes. The bill needs clarifying language to exempt plastic packaging used to prevent tampering for over the counter drugs.

Persons Testifying (Environment, Energy & Technology): PRO: Joanna Eide, Department of Natural Resources; Sego Jackson, Seattle Public Utilities Strategic Advisor, Waste Prevention and Product Stewardship; Jeff Gaisford, King County Solid Waste Division; Gus Gates, Surfrider Foundation; Bruce Speight, Environment Washington; Heather Trim, Zero Waste Washington; Carl Schroeder, Association of Washington Cities.

CON: Peter Godlewski, Association of Washington Business; Jennifer Gibbons, Toy Association.

OTHER: Laurie Davies, DOE; Carolyn Logue, Washington Food Industry Association; Scott Sigmon, Consumer Health Products Association; Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):
No one.

Staff Summary of Public Testimony on Proposed Second Substitute (Ways & Means):

PRO: This bill deals with what we do with recycling after the consumer uses it and before the plastic packaging in this case gets to the consumer. This bill is very different than the earlier one that was heard. At my house we are swimming in plastic since you cannot buy bread or tomatoes that do not come in a plastic container. This will actually help create the markets for recycled plastic. This version moves the financial burden to the manufacturers from the state and dramatically reduces the fiscal impact on the state. We have a big problem with plastics in our system and a growing plastic burden and it is getting more and more expensive to manage. This bill will bring plastic recycling across the entire state and will reduce costs and reduce the cost of recycling across the state. It will create jobs in Washington. This is the most comprehensive solution that has been introduced this year to the current market crisis with China as well as a long standing problem where local

governments and your constituents are shouldering the cost of what producers decide to package their products in. Plastics in particular have been particularly challenging because of their bulk and the variety of approaches and different compounds that have been introduced over the years. We think that the current crisis provides you with a good opportunity to take a long term bold action here which would shift the financial responsibility from your constituents to the product producers where we believe it belongs. We do think you have successful programs that this is modeled on in other parts of the world so it is not quite as large of a step as it may seem and this is a sort of policy that could benefit cities large and small, east and west, across the state. We have a growing problem with single use plastics and in particular, plastic packaging in the last fifty years.

CON: The consumer electronics industry by far and away is the industry with the most experience with products stewardship here in the U.S. We comply with twenty-five state programs including the state of Washington and District of Columbia. We have spent over one billion dollars in those states complying with the laws for electronics. In that process we have learned a lot. These programs often have unintended consequences of putting extreme pressure on local recycling markets. These systems operate outside of natural market forces creating winners and losers chosen by their products stewardship organization and leaving others unable to operate. Ultimately the lack of market forces under products stewardship programs lead to higher costs of collection and recycling and we are encouraged to see the proposed substitute does call for the evaluation and assessment into the current state of plastics packaging. The challenge here is that the legislation presupposes the solution is product stewardship and we feel a more appropriate next step after that evaluation and assessment process is to bring together a stakeholder group to look at all of the policy solutions. The costs of this particular proposal on industry is concerning. While not a perfect example, there are programs in Ontario and British Columbia that are very expensive. Approximately \$200 million US to comply with those. We prefer the approach in Senate Bill 5545. This is a conversation that should take place, unfortunately with this lineup of products we do not believe the EPA model is suited for this. We think it would be better used for more homogeneous type products such as architectural paint, which the House is considering now.

OTHER: The definition of producer is still too broad and could be smaller stores as potential producers. There needs to be some more meat put into that study language and if any litter tax dollars are there we want to see that litter tax fully funded.

Persons Testifying (Ways & Means): PRO: Heather Trim, Zero Waste Washington; Carl Schroeder, Association of Washington Cities; Bruce Wishart, Puget Soundkeeper.

CON: Mark Johnson, Washington Retail; Katie Reilly, Consumer Technology Association; Peter Godlewski; Grant Nelson, American Chemistry Council; Holly Chisa, Northwest Grocery Association; Brad Tower, Toy Association; Kevin Messner, Association of Home Appliance Manufacturers.

OTHER: Carolyn Logue, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.