

SENATE BILL REPORT

SB 6213

As of January 29, 2020

Title: An act relating to certain expanded polystyrene products.

Brief Description: Concerning certain expanded polystyrene products.

Sponsors: Senators Das, Carlyle, Van De Wege, Dhingra, Kuderer, Lovelett, Nguyen, Billig, Rolfes, Saldaña, Darneille, Hasegawa, Liias, Keiser, Pedersen, Stanford, Frockt, Wellman and Wilson, C.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/21/20.

Brief Summary of Bill

- Establishes a timeframe for prohibiting the sale, distribution, and use of expanded polystyrene (EPS) foam food service products and packaging materials.
- Requires the Department of Ecology to enforce the restrictions primarily through education and notice materials.
- Provides penalties for violations of the restrictions on the sale, distribution, and use of EPS foam food service and packaging materials.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Jan Odano (786-7486)

Background: EPS foam, also known as Styrofoam in the United States and Canada, is a lightweight material often used for single-use food containers and packaging materials.

EPS foam is economical and easy to manufacture. It is water resistant, light weight, buoyant, and is an excellent material for insulation. However, there are concerns about EPS foam. It readily breaks down into into small pieces, it is difficult to dispose of because of its lightweight properties, and it may take many years to decompose depending on conditions.

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.

Throughout the U.S., there are a number of cities and counties that have adopted ordinances banning food service ware made from EPS foam. In Washington, nine cities have passed ordinances restricting the use of products made of EPS foam.

The Department of Ecology (Ecology) is required to develop a state-wide plan for solid and hazardous waste to manage waste and materials in Washington. Its goal is to eliminate waste and toxins wherever possible, and use the remaining wastes as resources. Ecology reviews and approves locally issued permits and solid waste management plans, and defines minimum functional standards for all types of solid waste facilities.

There are 35 local public health jurisdictions (LHJs) in Washington. LHJs have primary responsibility for the health and safety of Washington residents. Within its purview, LHJs are responsible for environmental health and safety, which includes food safety inspections and permits, onsite sewage, safe shellfish, and solid waste facility inspections and permits.

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

Summary of Bill: Beginning January 1, 2022, the sale, distribution, and manufacture of EPS foam food service products, coolers, and packaging materials in and into the state is prohibited. Beginning July 1, 2022, the sale and use of EPS foam food service products at food establishments is prohibited. Food packagers and food establishments are prohibited from using EPS foam food service products for raw, uncooked meat, fish, poultry, and seafood beginning January 1, 2025.

Ecology is required to:

- enforce the restrictions through notification and information;
- provide manufacturers and distributors notice and educational materials regarding the prohibition on the sale, distribution, and manufacture of EPS foam products;
- develop outreach and educational resources that are translated and culturally appropriate for the state's diverse ethnic populations;
- provide local health jurisdictions conducting food safety inspections with information regarding food service product restrictions; and
- establish an internet-based forum to receive complaints regarding violations.

Ecology may grant a waiver to a food service establishment up to one year if compliance presents an undue hardship or practical difficulty that is not applicable to other food service establishments.

LHJs conducting food safety inspections must ensure the notice regarding restrictions on the use of EPS foam food service products provided by Ecology is posted in a conspicuous place.

Beginning July 1, 2022, manufacturers of prohibited EPS foam products must recall and reimburse retailers and other purchasers for the product. A violation of the prohibition on the sale, manufacture, and distribution of restricted products is subject to a fine of \$5,000 per day, per violation, not to exceed \$10,000 for each repeat offense.

A food service establishment or food packager violating the restrictions on the use of EPS foam food service products is subject to a notice for the first and second offense, and a \$250 penalty for the third offense.

All penalties may be appealed to the PCHB.

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: PRO: It is time for Washington to take action. Environmentally conscious policy is taking hold and its time to move forward. Banning styrofoam is common sense. My generation has the right to grow up on a planet that is not being polluted. Styrofoam hurts wildlife and people. This is first step in healing our planet. Toxins are released when styrofoam is heated. It pollutes more than water as the wind takes it into our deserts. Animals mistakenly eat it and they can die from the toxins and stomach blockage. There are alternative that are sustainable and ecofriendly. Beach cleanups over the past ten years have been overwhelmingly plastic and polystyrene. It is impossible to pick up all of the polystyrene as it breaks into smaller and smaller pieces. It is the most common pollutant found, you might find it more than shells on the beach. Beach cleanups are great but we should not have to rely on volunteers to clean up. There is no curbside pickup of styrofoam because it can not be recycled unless it is cleaned. Our market uses compostable meat trays, and they work well.

CON: This would eliminate 36 local jobs. There needs to be a comprehensive approach to single use plastics. The bills passed last year will provide recommendations for policies to address this issue. This bill would make it more difficult to get more partners for our businesses. The replacement products may not be as recyclable as polystyrene. Our customers dictate the type of packaging they need. We would need alternatives that are cost effective, available, and protect public health. Preemption of local ordinances would provide state-wide expectations. There needs to be clarification on the enforcement. Bans do not create jobs. We are trying to help the community, economy, and the environment. We are a small business and employ some people with challenges. We, along with other businesses, recycle styrofoam into crown molding and other products.

OTHER: This bill might be premature. Last year the legislature passed a couple of bills to study plastics and make recommendations to the Legislature. At the Recycling Development Center styrofoam is the leading issue.

Persons Testifying: PRO: Senator Mona Das, Prime Sponsor; Kylee Reynolds, Glenwood Elementary; Madison DeCrescenzo, Glenwood Elementary; Gus Gates, The Surfrider Foundation; Nora Nickum, Seattle Aquarium; Joanna Grist, PCC Community Markets; Heather Trim, Zero Waste Washington; Ken Campbell, The Ikkatsu Project.

CON: Dave Ducharme, Washington State Tree Fruit Association; Catherine Holm, Washington Food Industry Association; Tim Shestek, American Chemistry Council; Marilyn Lauderdale, Styro Recycle Owner; Matt Durbin, Agilyx; Tom McBride, Dart Container; Biyuan Chen, Dart Container; Holly Chisa, NW Grocery Association; Shaun McGuire, Plant Manager, Wenatchee, Dolco; Peter Godlewski, Association of Washington Business.

OTHER: Samantha Louderback; Laurie Davies, Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.