

SENATE BILL REPORT

E2SSB 6213

As Passed Senate, February 17, 2020

Title: An act relating to certain expanded polystyrene products.

Brief Description: Concerning certain expanded polystyrene products.

Sponsors: Senate Committee on Ways & Means (originally sponsored by 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, 1/30/20 [DPS-WM, DNP].

Ways & Means: 2/10/20, 2/11/20 [DP2S, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/17/20, 29-19.

Brief Summary of Engrossed Second Substitute Bill

- Prohibits the sale and distribution of covered expanded polystyrene products beginning June 1, 2023.
- Authorizes the Department of Ecology to administer, implement, and enforce the prohibitions on the sale and distribution of covered products.
- Preempts local ordinances that were not enacted before June 1, 2020.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 6213 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, McCoy, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Brown, Rivers 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

Majority Report: That Second Substitute Senate Bill No. 6213 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Honeyford, Assistant Ranking Member, Capital; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Brown, Assistant Ranking Member, Operating; Becker, Hunt, Muzzall, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Rivers and Schoesler.

Staff: Jed Herman (786-7346)

Background: Expanded polystyrene (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.

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 toxic compounds 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 Engrossed Second Substitute Bill: Beginning June 1, 2023, the sale and distribution of covered products, which includes certain EPS foam food service products, coolers, and packaging materials in and into the state is prohibited. A covered product does not include containers for raw, uncooked meat, fish, poultry, seafood, vegetables, fruit, and egg cartons.

Ecology may adopt rules to administer, implement, and enforce prohibitions on the sale and distribution of covered products and must post on its website information regarding the prohibitions. Ecology may develop culturally appropriate and translated educational materials and resources developed for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states. Ecology must provide technical assistance and guidance to manufacturers of covered products upon request or who are in violation of the act. A written notice serves as a notice of violation. Ecology must issue at least two notices of violation prior to assessing a penalty.

Beginning June 1, 2023, manufacturers in violation of the prohibition on the sale and distribution of restricted products are subject to a fine of \$250 per day, per violation, not to exceed \$1,000 for each repeat offense. Penalties may be appealed to the PCHB.

Local ordinances that were not filed by April 1, 2020, and enacted as of June 1, 2020, are preempted.

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: 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 (Environment, Energy & Technology): 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 (Environment, Energy & Technology):
No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We support this bill as styrofoam is a contaminate in the recycling system. The World Health Organization has indicated styrofoam as a possible carcinogen. We support having a state-wide standard. We also think education needs to be part of the strategy.

CON: This bill is a job killer. Alternatives are two to three times more expensive. You passed legislation last year that gave direction to Ecology to study the issue and develop recommendations. You should wait for the reports. We are opposed as this will impact jobs here in Tumwater. We support the exemption for meat trays, need other items to be exempted. The bill will impact jobs in Wenatchee.

OTHER: The bill will cost more to buy alternative materials. We like the narrowness of the bill.

Persons Testifying (Ways & Means): PRO: Holly Chisa, NW Grocery Association; Heather Trim, Zero Waste Washington.

CON: Tom McBride, Dart Container; Kathy Warren, Dart Container Human Resources Manager; Grant Nelson, American Chemistry Council; Shaun McGuire, Plant Manager-Wenatchee, Dolco.

OTHER: Catherine Holm, Washington Food Industry Association.

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