

HOUSE BILL REPORT

SHB 1145

As Passed House:

March 1, 2021

Title: An act relating to allowing the use of nonwood renewable fiber in recycled content paper carryout bags.

Brief Description: Allowing the use of nonwood renewable fiber in recycled content paper carryout bags.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representative Rude).

Brief History:

Committee Activity:

Environment & Energy: 1/26/21, 2/5/21 [DPS].

Floor Activity:

Passed House: 3/1/21, 97-0.

Brief Summary of Substitute Bill

- Makes nonwood renewable fiber derived from wheat straw grown in North America eligible to count toward the minimum 40 percent recycled content requirements for paper carryout bags provided by retail establishments.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Berry, Boehnke, Fey, Goehner, Harris-Talley, Ramel, Shewmake and Slatter.

Staff: Jacob Lipson (786-7196).

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

Background:

Local Carryout Bag Ordinances.

A number of municipalities in Washington have adopted ordinances addressing single-use plastic bags and other types of carryout bags. In addition to restricting single-use plastic bags, some local ordinances establish bag performance specifications and require a charge to be levied by grocers and other retail establishments for the provision of single-use paper or other carryout bags.

2020 Restrictions on Single-Use Carryout Bags.

Beginning January 1, 2021, retail establishments may not provide single-use plastic bags designed to be used once and disposed. Retail establishments are defined to include entities that sell or provide food, merchandise, goods, or materials directly to a customer, including home delivery and vendors operating at events. Food banks and food assistance programs are not retail establishments but are encouraged to reduce the use of single-use plastic bags. Retail establishments may provide the following types of carryout bags to customers:

- recycled-content paper carryout bags, which must contain at least 40 percent postconsumer recycled content materials, be capable of composting consistent with existing American Society of Testing and Materials standards for the labeling of items with paper substrates and plastic or polymer coatings, and display the postconsumer recycled content on the bag's exterior; and
- reusable carryout bags, which must have a minimum lifetime of 125 uses and be machine washable or made of a durable material that can be cleaned or disinfected. Reusable carryout bags include reusable carryout bags made of film plastic, which must meet minimum thickness requirements.

Carryout bags do not include bags used inside stores by customers to:

- package bulk items;
- contain or wrap items where dampness or sanitation may be a problem;
- contain unwrapped prepared foods or bakery items;
- contain prescription drugs; or
- protect an item from damaging other items when placed inside a carryout bag.

Pass-through Charges on Carryout Bags.

Retail establishments must collect and retain from customers a pass-through charge of 8 cents for each:

- paper carryout bag with a manufacturer's stated capacity of at least one-eighth barrel or 882 cubic inches; and
- reusable carryout bag made of film plastic, until December 31, 2025. Beginning January 1, 2026, the pass-through charge for reusable film plastic bags increases to 12 cents per bag.

This charge is a taxable retail sale and must be shown on customer receipts. However, retail establishments may deduct from business and occupation taxes the amounts collected from pass-through charges. This tax deduction is not subject to the tax preference performance statement or automatic expiration date. Retail establishments may not collect a pass-through charge from persons using vouchers or electronic benefit cards issued under the Women, Infants, and Children Nutrition Program, the Temporary Assistance for Needy Families program, the Supplemental Nutrition Assistance Program, or the Food Assistance Program.

Enforcement of Carryout Bag Restrictions.

The Department of Ecology (Ecology) may adopt rules to implement, administer, and enforce the restrictions on carryout and in-store bags. Enforcement of bag restrictions must be largely on a complaint basis, and Ecology must establish a forum to receive complaints, which may include a telephone hotline, electronic social media strategy, or a form on Ecology's website. Local jurisdictions and other persons may file complaints using the forum, and local jurisdictions may review complaints filed with Ecology in order to support education and outreach to retail establishments by the local jurisdictions. Ecology, in collaboration with local jurisdictions, must provide education and outreach activities to inform retail establishments, consumers, and others. The civil penalties of up to \$250 per violation of bag restrictions are appealable to the Pollution Control Hearings Board.

Summary of Substitute Bill:

The 40 percent recycled content minimum requirement for paper carryout bags offered by retail establishments may be satisfied by any of the following three combinations of materials:

- at least 40 percent postconsumer recycled materials;
- at least 40 percent nonwood renewable fiber, which is defined as plant-based fiber derived from wheat straw grown in North America; or
- at least 40 percent of any combination of postconsumer recycled materials or nonwood renewable fiber.

Paper carryout bags provided by retail establishments must display on the exterior of the bag either the recycled content or the wheat straw fiber content, or both.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Agricultural waste products can be made into pulp for purposes of papermaking. Creating a market for leftover wheat straw will reduce the risk that farmers need to burn their agricultural residue. Allowing wheat straw fiber to be used in pulp for paper bags and to count towards minimum recycled content requirements will be an economic driver for using waste products in a beneficial way. Allowing wheat straw in paper bags will create jobs and support farmers. Using wheat straw used in paper bags has a smaller carbon footprint and is more water-efficient than tree-derived fiber. Wheat straw only has the potential to produce a small fraction of the fiber needed for carryout bags, and will never be a significant competitor to paper recycling.

(Opposed) None.

(Other) Making better use of fiber from hay straw is a laudable intent. Washington is experiencing a recycling crisis, and this bill risks undercutting the market demand for recycled paper by providing an alternative that can be used in paper bag manufacturing. Allowing the use of nontree fiber to count towards minimum recycled content requirements for paper bags would make Washington's law inconsistent with other state laws governing recycled content.

Persons Testifying: (In support) Representative Rude, prime sponsor; and Phil Harding, Willamette Falls Paper Company.

(Other) Heather Trim, Zero Waste Washington.

Persons Signed In To Testify But Not Testifying: None.