
Environment & Energy Committee

HB 1488

Brief Description: Concerning the management of plastic packaging materials.

Sponsors: Representatives Fey, Senn, Walen, Peterson, Lekanoff, Hackney, Slatter, Duerr and Pollet.

Brief Summary of Bill

- Establishes minimum postconsumer recycled (PCR) content requirements for rigid and flexible plastic packaging.
- Assesses fees on plastic that do not meet minimum PCR requirements, and distributes fee revenues to local governments.
- Requires producers of plastic packaging to report weight and resin type of plastic used for plastic packaging in Washington.
- Establishes a stakeholder advisory committee to make recommendations to the Department of Ecology regarding the implementation of PCR requirements and fees and the establishment of related exemptions.
- Preempts local government PCR requirements.

Hearing Date: 2/11/21

Staff: Jacob Lipson (786-7196).

Background:

Department of Ecology Plastics and Recycling Evaluations.

In 2019 the Legislature directed the Department of Ecology (Ecology) to evaluate and assess the amount and types of plastic packaging sold into the state, as well as its management and

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.

disposal. The report was required to assess specified aspects of plastic packaging markets and processing infrastructure, and to include recommendations to meet the following goals of reducing plastic packaging through industry lead or product stewardship:

- achieve 100 percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;
- achieve at least 20 percent postconsumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

In December 2020 Ecology submitted a report to the Legislature that included 10 policy recommendations related to the management of packaging materials.

The Recycling Development Center (Center) within Ecology is responsible for furthering the development of markets and processing for recycled commodities and products. Toward these ends, the Center must provide or facilitate research and development, marketing, and policy analysis and must initially direct its services to businesses that turn waste materials into usable or marketable products.

Plastic Labeling Requirements.

Since 1992 state law has required plastic bottles and rigid plastic containers to be labeled with a code identifying the type of resin used to produce the container. The types of plastic resin are categorized as:

- 1: PETE (polyethylene terephthalate);
- 2: HDPE (high density polyethylene);
- 3: V (vinyl);
- 4: LDPE (low density polyethylene);
- 5: PP (polypropylene);
- 6: PS (Polystyrene); and
- 7: Other.

Local Solid Waste Financial Assistance.

Ecology administers a local solid waste financial assistance program for local government solid waste and hazardous waste planning. Counties may apply to Ecology for financial aid for the preparation of county solid waste plans. Cities that prepare independent solid waste management plans may file with Ecology for financial aid as part of their county's financial aid application.

Local government grant receipts must be accompanied by a 25 percent in-kind or cash contribution by the local government. Ecology has adopted rules and guidelines governing the application process for local solid waste financial assistance, as well as specifying eligible project types and costs.

Waste Reduction, Recycling, and Litter Control Act.

The Waste Reduction, Recycling, and Litter Control Act (Act), dating to 1971, prohibits littering and establishes statewide programs to prevent and clean up litter, reduce waste, and increase recycling. These programs are funded by the 0.015 percent litter tax on manufacturers', wholesalers', and retailers' gross proceeds on 13 categories of consumer products. The programs funded by the litter tax under the Act include litter collection efforts by state agencies, Ecology, and state assistance of local government waste reduction, composting, and recycling programs.

Forty percent of money in the Waste Reduction, Recycling, and Litter Control Account created to carry out the Act is directed towards state litter collection efforts, 40 percent goes to Ecology to carry out its waste reduction, recycling, litter control, and composting coordination, promotion, and technical assistance activities, and 20 percent is allocated to Ecology to fund local government waste reduction, recycling, litter control, and composting activities.

Other.

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. Cities and towns have the authority to provide their own solid waste services or to contract for solid waste services. Solid waste services provided or contracted by cities and towns are not subject to UTC regulation. Materials collected for recycling are transported to material recovery facilities, which receive, compact, repack or sort materials for the purposes of recycling.

The Public Records Act requires state and local government agencies to make all public records available for public inspection and copying unless the records fall within a statutory exemption.

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

Summary of Bill:

Plastic Data Reporting.

Producers of plastic packaging must report annually to the Department of Ecology (Ecology) the amount, in pounds and by resin type, of virgin plastic and postconsumer recycled (PCR) plastic used for plastic packaging sold or distributed in Washington.

Ecology must post on its website aggregated reported information for all producers. Ecology must keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment. Ecology may conduct audits to ensure compliance with reporting requirements.

Minimum Recycled Content Requirements for Plastic Packaging.

Producers of plastic packaging must meet minimum PCR content requirements.

For packaging that is primarily resin number 1 or 2, the minimum PCR content requirements are as follows:

- at least 15 percent PCR content, from July 1, 2023, until December 31, 2026;
- at least 25 percent PCR content, from January 1, 2027, until December 31, 2030; and
- at least 50 percent PCR content, beginning January 1, 2031.

For rigid packaging that is primarily resin numbers 3, 4, 5, 6, or 7, the minimum PCR content requirements are as follows:

- at least 15 percent PCR content, from July 1, 2023, until December 31, 2030;
- at least 25 percent PCR content, from January 1, 2031, until December 31, 2035; and
- at least 50 percent PCR content, beginning January 1, 2035.

For flexible packaging that is primarily resin numbers 3, 4, 5, 6, or 7, the minimum PCR content requirements are as follows:

- at least 10 percent PCR content, from January 1, 2023, until December 31, 2028;
- at least 20 percent PCR content, from January 1, 2029, until December 31, 2035; and
- at least 30 percent PCR content, beginning January 1, 2036.

These minimum requirements are to be measured each year across a producer's entire product line for the total amount of plastic packaging sold, offered for sale, or distributed in Washington. Plastic packaging is the portion of packaging made from plastic, whether alone or in combination with another material, that is used to protect, contain, or transport a product at any point from manufacturer to place of use, or that is attached to a product or its container for marketing or communicating information about the product. Packaging includes packaging that is filled or unfilled, and packaging intended to be sold as a product to customers.

Every two years or at the petition of a producer or the plastic packaging industry, Ecology must consider whether to reduce the minimum PCR requirements, taking into consideration at least six specified factors. If Ecology determines that a minimum PCR requirement should be adjusted, the adjusted rate remains in effect until the expiration of the effective period or until Ecology makes a new determination. Ecology may not increase the minimum PCR requirements, and may not adjust the minimum PCR requirements below the minimum percentage established for the effective period beginning in 2023.

By rule, Ecology must exempt 10 specified categories of plastic packaging from minimum PCR requirements. Exempt categories include plastic packaging and food serviceware, plastic bags, compostable bags, and packaging of products that are federally regulated as drugs, medical devices, or dietary supplements.

Fees for Failure to Meet Minimum Postconsumer Recycled Content Requirements.

Producers that do not meet minimum PCR requirements are subject to a fee. Ecology must adopt

rules to implement a fee of no more than \$200 per ton. Ecology may lower fees for producers that achieve partial compliance. The fee must be estimated to raise between \$30 million and \$40 million per biennium. Ecology must publish an annual report on fee revenues. Ecology may not spend more than 10 percent of collected fees on program administration or enforcement.

Ecology may grant a reduction in fees to producers of plastic packaging, after considering at least four specified factors. A producer must receive Ecology approval of a submitted corrective action plan in order to obtain a reduction of the fee. Ecology must provide a written explanation of their decision to approve or deny a submitted corrective action plan.

Recycling Improvement Account.

A Recycling Improvement Account (RIA) is created for the receipt of fees imposed on plastic packaging. Expenditures from the account must be used for distributions by Ecology to cities and counties that are eligible to receive financial assistance from Ecology's Local Solid Waste Financial Assistance Program. Cities and counties must use received funds to develop and implement:

- recycling infrastructure improvements and improvements to curbside recycling programs that increase the recyclability of plastic packaging;
- collection points for plastics not effectively managed through curbside programs; and
- solid waste management, regulation, technical assistance, and public education.

Ecology may incorporate the fund prioritization criteria and process of the Local Solid Waste Financial Assistance Program. Ecology must distribute funds to counties based on county population, after distributing a set minimum amount to each county. Ecology must develop rules governing fund distributions in conjunction with an advisory committee comprised of specified local government officials.

Stakeholder Advisory Committee.

A stakeholder advisory committee (committee) is established. The committee must recommend to Ecology methods for aggregating materials to determine compliance, exemptions, or alternative compliance requirements for minimum PCR requirements and fees applicable to at least seven specified types of plastic packaging. Ecology must provide written explanations to the committee regarding exemption decisions adopted by Ecology rule. The committee is comprised of members representing 18 specified interests, appointed jointly by the Senate and the House of Representatives.

Other.

Ecology may adopt rules to implement, administer, and enforce PCR reporting, standards, and fees.

The Pollution Control Hearings Board has jurisdiction to hear appealable Ecology decisions to

set minimum PCR content for plastic packaging and to assess fees.

Until June 30, 2022, 4 percent of the Waste Reduction, Recycling, and Litter Control Account (WRRLCA) is to be used by Ecology to implement and enforce minimum recycled content requirements. Until June 30, 2022, the percentage of WRRLCA funds for Ecology to carry out its waste reduction, recycling, litter control, and composting coordination, promotion, and technical assistance activities is reduced from 40 percent to 36 percent. Until June 30, 2024, \$1 million of the fee on plastic packaging must be deposited in the WRRLCA, rather than the RIA.

Local governments may not implement local recycled content requirements for plastic packaging that are inconsistent with state minimum PCR content requirements. Local laws and ordinances that exceed, are more restrictive than, or are inconsistent with state minimum PCR content requirements are preempted and may not be enacted.

An exemption from disclosure under the Public Records Act is created for information submitted to Ecology related to PCR content requirements that contain business trade secrets or proprietary information about manufacturing processes and equipment.

The establishment of minimum recycled content requirements does not change or limit the authority of the Utilities and Transportation Commission or the authority of city or town governments regarding the regulation of solid waste.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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