

# HOUSE BILL REPORT

## E2SHB 1799

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### As Amended by the Senate

**Title:** An act relating to organic materials management.

**Brief Description:** Concerning organic materials management.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Berry, Duerr, Riccelli and Harris-Talley).

### Brief History:

#### Committee Activity:

Environment & Energy: 1/20/22, 1/21/22, 2/1/22 [DPS];  
Appropriations: 2/7/22 [DP2S(w/o sub ENVI)].

#### Floor Activity:

Passed House: 2/11/22, 56-42.  
Senate Amended.  
Passed Senate: 3/3/22, 34-14.

### Brief Summary of Engrossed Second Substitute Bill

- Establishes state goals related to organic materials management, and requires local governments' solid waste plans to identify priority areas and a volumetric capacity for managing organic materials in a manner consistent with state goals.
- Requires certain local governments to provide source-separated organic materials collection services, and requires certain businesses to arrange for organic materials management services.
- Amends civil and criminal liability standards applicable to the donation of food.
- Creates the Washington Center for Sustainable Food Management within the Department of Ecology.
- Establishes and expands funding programs applicable to organic

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*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.*

materials management.

- Requires county and city development regulations to allow for the siting of organic materials management facilities in priority areas consistent with local solid waste plans and to the extent necessary to achieve state organic materials management goals.
- Requires certain local governments to adopt an ordinance addressing procurement of finished compost materials.
- Makes numerous changes to the program establishing standards related to the labeling of plastic and compostable products.

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## HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

**Minority Report:** Do not pass. Signed by 1 member: Representative Dye, Ranking Minority Member.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

**Staff:** Jacob Lipson (786-7196).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Dye, Harris, Hoff, Jacobsen, Schmick and Steele.

**Minority Report:** Without recommendation. Signed by 8 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler and Rude.

**Staff:** Dan Jones (786-7118).

## **Background:**

### Solid Waste, Organic Materials, and Food Waste Management.

Under the state's solid waste management laws, local governments are the primary government entity responsible for implementing state solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws. Ecology is responsible for working cooperatively with local governments as they develop their local solid waste management plans. Ecology also evaluates, analyzes, and monitors the state's solid waste stream, and develops a statewide solid waste plan that, in part, addresses organic material wastes.

County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element. This element must include waste reduction strategies, recycling strategies, and source separation strategies.

Since 2019, Washington has had an established goal to reduce the annual generation of food waste by 50 percent by 2030. A subset of the goal includes a prevention goal related to edible food waste. In order to achieve the 2030 food waste reduction goal, Ecology, working with other state agencies, adopted the Use Food Well Washington plan in December 2021. The Use Food Well Washington plan contains 30 federal and state policy recommendations, including recommendations:

- to create a Washington Center for Sustainable Food Management with certain duties;
- related to the liability protections for persons that donate food;
- for funding or financial incentives for certain activities supportive of food waste reduction goals; and
- for changes to data management, public outreach, coordination, and new programmatic activities to be implemented by a variety of public entities.

### Washington's Good Samaritan Food Donation Act.

Under Washington's Good Samaritan Food Donation Act, persons are not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product donated in good faith to a nonprofit organization for distribution to needy individuals. This exception from civil or criminal liability does not apply to injury or death of a user or recipient of a donation resulting from gross negligence or intentional misconduct of the donor. If some or all of donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, or local laws and regulations, the donor of food is not subject to civil or criminal liability only if the nonprofit organization that receives the donated food or grocery products is informed by the donor of the condition of the donated food or grocery products, agrees to recondition the food to comply with quality and labeling standards, and is knowledgeable of the standards to properly recondition the donated food or grocery product.

### Local Government Development Regulations.

The Growth Management Act (GMA) is the comprehensive land-use planning framework

for counties and cities in Washington. The GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities, and establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

Cities and counties that are not subject to the GMA may adopt comprehensive plans, zoning ordinances, and other official controls under the state's optional planning enabling statutes.

#### Compost Procurement Requirements.

Since 2020, state agencies and local governments have been required to consider whether compost products can be used in government-funded projects when planning or soliciting and reviewing bids for government-funded projects. If compost products can be utilized in the project, the agency or local government must do so, except if:

- compost products are not available within a reasonable amount of time;
- compost products that are available do not meet existing purchasing standards or federal or state health and safety standards; or
- compost purchase prices are not reasonable or competitive.

In 2020, the Legislature directed the Department of Agriculture (Agriculture) to create a 3-year compost reimbursement program for certain farming operations' expenses related to purchasing and using compost products. This three-year reimbursement program was vetoed by Governor Inslee.

Generally, purchases of or contracts for goods and services must be based on a competitive solicitation process, unless a specific exemption applies. When local governments are required to make purchases from the lowest bidder or from the supplier offering the lowest price, they may take into consideration tax revenue they would receive from purchasing supplies, materials, or equipment from a supplier located within their jurisdiction. Local governments may, however, allow for the preferential purchase of products made from recycled materials or products that may be recycled or reused.

#### Product Degradability Labeling Requirements.

Products that are labeled as compostable and sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier, must:

- either be comprised of only wood or fiber-based substrate, or must meet the American Society of Testing and Materials (ASTM) standards for products designed to be composted in municipal or industrial facilities that are made of plastic or that incorporate plastic coatings onto paper or another substrate;

- meet Federal Trade Commission (FTC) green guide labeling requirements; and
- feature labeling that uses a logo indicating that the product has been third-party certified as meeting ASTM standard specification, displays the word "compostable," and meets industry standards for being distinguishable upon quick inspection. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks.

Manufacturers or suppliers of film bags that meet ASTM composting standards for plastics and that are distributed or sold by retailers must ensure that the bag is readily and easily identifiable in a manner consistent with the FTC green guides. Readily and easily identifiable film bags must be of a uniform green or brown color or meet certain other specified requirements regarding the size, location, and color of the word "compostable" on the bag. Film bags that meet ASTM composting standards may not display recycling symbols, such as the "chasing arrow" symbol. To the extent that film bag labeling requirements conflict with the FTC guides, manufacturers or suppliers are not required to comply.

Manufacturers or suppliers of food service products and film products, other than film bags, that meet ASTM composting standards for plastics or plastic-coated substrates must ensure that the items are readily and easily identifiable. Readily and easily identifiable film wrap and food service products must be labeled with a logo indicating the product has met ASTM standards, and labeled with the word "compostable," where possible. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks. Specified additional characteristics, such as color and graphic elements, are encouraged for compostable film wrap and food packaging and food service ware. To the extent that these product labeling requirements conflict with the FTC guides, manufacturers or suppliers are not required to comply.

Food service products and film products, including film bags, that do not meet ASTM standards are:

- prohibited from using tinting, labeling, and terms that are required of products that meet ASTM standards;
- discouraged from using coloration, labeling, images, and terms that confuse customers into mistakenly identifying noncompostable products as compostable; and
- encouraged to use identifying features that indicate whether a product is recyclable or must be disposed of as waste.

Manufacturers and suppliers, upon request by a person, must provide non-confidential business information demonstrating their compliance with labeling and marketing requirements.

The suppliers subject to product degradability labeling requirements do not include entities that sell products to end users as a retailer.

The Attorney General, cities, and counties have concurrent authority to enforce labeling and marketing requirements. Violations occur upon the sale of a noncompliant product by stockkeeping number or unique item number, but repeated sales of the same product constitute a single violation. Prior to assessing a violation, a city, county, or the state, on behalf of the Attorney General, must send written notice to a manufacturer or supplier of an alleged violation, providing 90 days to come into compliance. Civil penalties of up to \$1,000 are authorized for an initial violation, followed by \$5,000 for a second violation, and \$10,000 for a third violation. Second, third, and subsequent penalties may be imposed for each month of noncompliance. Penalty amounts are reduced by the amount of any penalty paid for the same violation to a different enforcing government entity. Penalties collected by local governments are retained by the local government office that brought the action, while state collected penalties are deposited into the Compostable Products Revolving Account used by the Attorney General in bringing enforcement actions.

Other.

In 2020 the Washington State Conservation Commission (Commission) was directed to develop a Sustainable Farms and Fields Grant Program in consultation with other specified government entities. The Commission is required to develop and approve a prioritization metric to guide the distribution of funds appropriated by the Legislature for this purpose, with the goal of producing cost-effective carbon dioxide equivalent impact benefits. Allowable uses of grant funds from the Sustainable Farms and Fields Grant Program include down payments on equipment, purchases of equipment, and services to landowners.

The Public Works Board may make low-interest loans or grants from the Public Works Assistance Account (PWAA) to finance the acquisition, construction, repair, replacement, or improvement of certain local public works projects, which include bridges, streets, and roads; water systems; storm and sanitary sewage systems; and solid waste facilities, including recycling facilities. Up to 10 percent of the PWAA capital budget appropriation may be provided for grants. Local governments and special purpose districts, except port and school districts, are eligible to apply for loans from the PWAA.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS).

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. Penalties appealable to the PCHB must generally be imposed following standard general protocols, including that the penalty must be accompanied by a notice in writing describing the violation, and specifying when the penalty must be appealed or else becomes due and payable. With some exceptions, penalties that are appealable to the PCHB are credited to the State General Fund.

Agriculture is required to maintain an information and referral service for persons and organizations that want to participate in food donation programs.

### **Summary of Engrossed Second Substitute Bill:**

#### State Organic Materials Management Goals.

Goals are established for organic material management (state organics goals), including a goal for the landfill disposal of organic materials at a level in 2030 that is 75 percent less than in 2015, and a goal that at least 20 percent of the volume of edible food disposed of as of 2015 be recovered for human consumption by 2025. The state organics goals are in addition to the food waste reduction goals established in 2019.

Organic materials are specified to include manure, yard waste, food waste, food processing wastes, wood wastes, and garden waste. Organic materials do not include chemically or biologically contaminated materials that would render the finished product of an organic material management process, such as composting or anaerobic digestion, unsuitable for general public or agricultural use.

#### Organic Materials Management Requirements for Businesses.

Beginning July 1, 2023, the Department of Ecology (Ecology) must determine which counties and cities preparing solid waste plans provide for businesses to be serviced by providers that collect food waste and organic waste for delivery to solid waste facilities that provide for composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies to manage those collected organic wastes (organic materials management). Ecology must determine that organics material collection service requirements apply to certain businesses within a local jurisdiction unless Ecology determines that businesses in some or all portions of the county have no available organic materials collection services that deliver organic materials for organic materials management, or there is no available capacity at solid waste facilities to which organic materials could feasibly and economically be delivered.

In jurisdictions or portions of jurisdictions subject to these organic material collection and management requirements, the requirements apply:

- beginning January 1, 2024, to businesses that generate at least 8 cubic yards of organic waste per week;
- beginning January 1, 2025, to businesses that generate at least 4 cubic yards of organic waste per week; and

- beginning January 1, 2026, to businesses that generate at least 4 cubic yards of solid waste per week. However, Ecology may determine by rule that additional reductions in the landfilling of organic materials would be more effectively achieved at reasonable cost to businesses by establishing a different volumetric threshold than 4 cubic yards per week of solid waste.

Waste volumes are measured by counting only wastes that are not managed on-site by a business, are not managed off-site by a business engaged in the growth of fiber or food, or are not generated in exceptional volumes due to a natural disaster or similar event. Businesses may satisfy the organic materials management requirements by source-separating organic waste from other waste and subscribing to and using an organic materials collection and management service, or managing organic waste on-site or self-hauling organic waste for organic materials management. Businesses subject to these requirements that arrange for gardening or landscaping services must require through contracts or work agreements that wastes generated by those services receive qualifying types of organics materials management. Businesses are not required to dispose of materials in a manner that conflicts with safety or health laws, and are not required to dispose of wastes generated in exceptional volumes from natural disasters through composting, digestion, or other organic material management options. Jurisdictional health departments may enforce these requirements on businesses, but must issue two written notices prior to issuing penalties, and may not charge businesses a fee associated with the administration and enforcement of these requirements.

Local Government Organic Material Collection and Management Requirements.

Beginning January 1, 2027, each county or city that implements a local solid waste plan must provide source-separated organic solid waste collection services at least either biweekly or 26 weeks annually to all residents and to non-residential customers that generate at least 0.25 cubic yards of organic materials per week, and must provide for organic materials management of collected organic materials. Cities and counties may charge and collect fees or rates for these services, consistent with existing authority to impose fees and rates for solid waste collection services. The organic material collection service and management requirements do not apply:

- in counties and cities implementing a solid waste plan that have a population of less than 25,000;
- in counties and cities implementing a solid waste plan that disposed of less than 5,000 tons of solid waste in the most recent year such data were available;
- in counties not planning under the Growth Management Act (GMA), in portions of a city or county implementing a solid waste plan that have a population density of less than 75 people per square mile and are located in an unincorporated portion of a county;
- in counties planning under the GMA, outside of designated urban growth areas; or
- in counties and cities implementing a solid waste plan that receive a renewable waiver from Ecology applicable to all or part of a jurisdiction. Waivers may be issued for up to five years and based on consideration of the distance to organic



materials management facilities, the sufficiency of capacity at local organic materials management facilities to manage additional materials, and pest control restrictions established by the Department of Agriculture (Agriculture). Ecology may adopt rules to establish the waiver process and criteria.

Any cities that newly begin implementing an independent solid waste plan after July 1, 2022, must meet organic material collection requirements.

Ecology may adopt a rule beginning January 1, 2030, that applies organic materials collection service and management requirements to jurisdictions exempted from requirements on the basis of population density or an Ecology-issued waiver, but only if Ecology determines that the state goals for the disposal of organic material in landfills for 2030 have not or will not be achieved. When newly developing, updating, or amending local solid waste management plans after July 1, 2024, each county solid waste plan must consider the transition to providing organic materials collection services to certain residents and businesses in 2027. The county solid waste plan must identify:

- priority areas within the county for the establishment of organic materials management facilities. Priority areas must be in industrial, agricultural, or rural zones and may not be located in overburdened communities identified by the Department of Ecology under the Climate Commitment Act enacted in 2021; and
- the organic materials management volumetric capacity required to manage the county's organic materials in a manner consistent with state organics goals.

When newly developing, updating, or amending local solid waste management plans after January 1, 2027, local solid waste plans must be consistent with the requirement to provide organic materials collection services to certain residents and businesses.

#### Local Development Regulations and Organic Materials Management Facility Siting.

For cities and counties planning under either the GMA or planning enabling statutes, development regulations to implement comprehensive plans that are newly developed, updated, or amended after January 1, 2025, must allow for the siting of organic materials management facilities in the areas designated in county solid waste plans to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified as part of the county solid waste plan.

#### Local Government Compost Procurement Requirements, Plans, and Ordinances.

By January 1, 2023, cities and counties with a population of at least 25,000, or in which organic material collection services are provided, must adopt a compost procurement ordinance to implement the 2020 requirement for local governments to consider the use of compost products in projects and to use compost products in a project except when availability, health, quality, safety, or price-competitive criteria are not met. In developing a compost procurement ordinance, cities and counties must consider four specified categories of compost uses, including landscaping projects and soil amendments. Cities and counties with a compost procurement ordinance must develop strategies to inform residents

regarding the jurisdiction's use of compost and the value of compost. Local governments must give priority to purchasing compost products that produce compost locally, are certified by a nationally recognized organization, that produce products derived from municipal solid waste compost programs, and that meet quality standards. Local governments may enter into collective purchasing agreements if cost-effective or efficient to do so. Contracts by governmental units must require the use of compost products to the maximum extent economically feasible to meet local government compost use requirements. Every two years beginning in 2024, cities and counties with a compost procurement ordinance must submit a report to the Department of Ecology.

Local governments may allow for the preferential purchase of compost in order to meet the requirements for local governments to use compost products where products are available, reasonably priced, and meet purchasing and safety standards.

#### Civil and Criminal Liability Standards for Food Donations.

The civil and criminal liability protections that apply to food donated to nonprofit organizations are expanded and amended:

- to apply to food donated directly to end recipients for consumption by a person required to have a food establishment permit under Department of Health rules (including grocery stores and restaurants);
- to apply to the donation of perishable food that is fit for human consumption but that has exceeded the labeled shelf-life date recommended by the manufacturer, if the person donating the food makes a good faith evaluation that the food is wholesome;
- to apply to donated food and grocery products that meet safety and safety-related labeling standards, rather than all quality and labeling standards. Safety and safety-related labeling standards are defined to include markings that communicate information to a customer about a product's safety, but which does not include pull dates required under state law or similar phrases intended to communicate information to a customer regarding the freshness or quality of a product; and
- to include donated food that is sold at a reduced price that is not greater than the cost of handling, administering, and distributing the product.

#### Washington Center for Sustainable Food Management.

The Washington Center for Sustainable Food Management (center) is established in Ecology with the purpose of helping coordinate statewide food waste reduction. The center is authorized to perform 13 specified categories of activities, including:

- measuring progress towards statewide organic materials management and food waste reduction goals;
- coordinating implementation of food waste reduction plans;
- maintaining a website with food waste reduction guidance;
- coordinating public-private and nonprofit partnerships, and collaborating with federal, state, and local government partners;
- developing maps or lists of locations of food systems in Washington;
- collecting and maintaining data on food waste and wasted food and measurement

- methodologies for tracking food donation, food waste, and climate impact data;
- distributing and monitoring grants related to food waste prevention, rescue, and recovery;
- supporting the adoption of local government solid waste ordinances or policies that establish a financial disincentive for organic waste generation and for the disposal of organic materials in landfills; and
- developing food waste reduction and food waste contamination reduction campaigns and promotional materials for destruction.

Ecology may enter into interagency agreements with other state agencies to fulfill the center's responsibilities. Ecology may adopt rules pertaining to the center. In order to obtain data to support the center's goals, Ecology may establish a voluntary reporting protocol for the receipt of information regarding food donations. Ecology may request that a donating business or food recipient provide information regarding the volume, types, and timing of food managed by the donating facility. Ecology must seek to obtain this information in a manner that is compatible with any similar information reported to Agriculture, and Agriculture must coordinate with Ecology to ensure that the food donation information receipt practices it implements are consistent with the center's practices.

By January 1, 2025, Ecology must research and adopt model ordinances for optional use by cities and counties. The optional model ordinances must provide model mechanisms for commercial solid waste collection and disposal that are designed to establish a financial disincentive or other disincentives for the generation of organic waste and the disposal of organic materials in landfills. Ecology must review the model ordinances under the State Environmental Policy Act (SEPA); a county or city that then adopts a model ordinance created and reviewed under SEPA by Ecology is not required to do its own SEPA review of the ordinance.

#### Funding Programs for Organic Materials Management.

Composting and organic materials management facilities are explicitly included among the solid waste facilities that may be funded as public works projects by the Public Works Board from the Public Works Assistance Account.

The allowable uses of grant funds under the Sustainable Farms and Fields Grant Program are expanded to include:

- the purchase of compost spreading equipment, or financial assistance to farmers to purchase compost spreading equipment, for the annual use for at least three years of volumes of compost determined to be significant by the Washington State Conservation Commission, from materials composted at a site not owned or operated by the farmer;
- scientific studies on crop residue; and
- efforts to support farm use of anaerobic digester digestate.

Agriculture must establish a compost reimbursement program for farming operations in

Washington for the purchase and use of compost products that were not generated by the farming operation. Costs covered by the compost reimbursement program must include transportation, spreading equipment, and labor, fuel, and maintenance costs associated with spreading equipment. Grant reimbursements under the compost reimbursement program begin July 1, 2023. Prior to carrying out activities for which compost reimbursement program reimbursement is sought, farming operations must complete an eligibility review with Agriculture. Agriculture must review proposed transport and application of compost materials for compliance with state pest control rules. Soil sampling by Agriculture must be allowed by compost reimbursement program participants. Compost reimbursement program applicants may not seek reimbursement for purchase or labor costs for its own compost products, from compost products transferred to another individual or entity, or from compost products that were not purchased from a facility with a solid waste handling permit. Farming operations are eligible to receive reimbursement for up to 50 percent of their costs incurred each fiscal year, in an amount up to \$10,000 per fiscal year. Agriculture must submit an annual report to the Legislature each year of the pilot program.

#### Product Degradability Labeling Requirements.

Product degradability labeling standards are amended to:

- require compostable products that meet American Society of Testing and Materials (ASTM) standards to use green, brown, or beige labeling, color striping, or other marks that help differentiate compostable items from non-compostable materials;
- allow film bags to be tinted beige, in addition to green or brown; and
- require compostable food service products and film products to be at least partially tinted or colored green, beige, or brown.

The entities subject to product degradability labeling requirements are redefined to newly include entities that sell products to end users as a retailer. Responsibility under the law as a producer is assigned to the manufacturer, to the product brand or trademark licensee, or, if there is not a product manufacturer or brand or trademark licensee over whom the state can exercise jurisdiction, to the importer or distributor of the product in or into Washington.

State enforcement responsibility for product degradability labeling requirements is transferred from the Office of the Attorney General to Ecology. Ecology may adopt rules pertaining to product degradability labeling requirements, and must begin enforcing requirements by July 1, 2024. Enforcement by Ecology and cities and counties must be based primarily on complaints, and Ecology must establish a forum to receive complaints. Producers of compostable products, including bags, film products, and food service products, must submit at least one compliance declaration to Ecology beginning in 2024 upon a product being sold or distributed into Washington, and again prior to any change in a product's method of compliance with compost labeling requirements. Ecology, in collaboration with cities and counties, must provide education and outreach to retail establishments, consumers, and suppliers, about product degradability labeling requirements.

Ecology-issued penalties are appealable to the Pollution Control Hearings Board (PCHB), and Ecology-issued penalties must be imposed consistent with standard protocols for penalties that are appealable to the PCHB. The Compostable Products Revolving Account is repealed, and state penalty recoveries are credited to the State General Fund.

Other.

Ecology must contract with a third-party consultant to study the adequacy of local solid waste management funding. Ecology must include specified stakeholders in scoping the study and reviewing the consultant's findings, and must submit a report to the Legislature by July 1, 2023. The study must:

- consider jurisdiction type, location, size, service level, and other differences between cities and counties;
- review funding types and funding models, including models used by solid waste programs in jurisdictions outside of Washington; and
- consider the impacts to city and county solid waste funding resources from specified types of state policy changes that have been enacted or considered in the past four years.

Nothing in the Act changes the authority of the Utilities and Transportation Commission to regulate solid waste collection, or limits the authority of cities and towns to provide or contract for solid waste service.

An intent section is included.

A severability clause is included.

**EFFECT OF SENATE AMENDMENT(S):**

Compared to the Engrossed Second Substitute House Bill, the Senate amendments:

- specify that priority areas identified in county solid waste management plans for the siting of organic material management facilities may not be located in overburdened communities identified by the Department of Ecology (Ecology), rather than air pollution-overburdened communities identified by Ecology under the Climate Commitment Act;
- eliminate the management of packaging and paper products through extended producer responsibility programs from the scope of policies to be evaluated in the 2023 report that Ecology must contract with an independent consultant to complete;
- exempt jurisdictions that have a total population of between 25,000 and 50,000 and that do not currently offer curbside organic waste collection services in the jurisdiction from the requirements that jurisdictions provide organic material collection services;
- prohibit jurisdictions from siting the increase or expansion of organic material management facilities other than anaerobic digesters that processed more than 200,000 tons of material relative to 2019 levels;

- exclude wastes managed by businesses that enters into voluntary agreements to sell or donate organic materials to other businesses from the wastes that must be managed for organic materials management by the generating businesses, and also excludes such wastes from the organic waste volume calculations that trigger organic material collection and management requirements for businesses;
- exclude food sold at a good Samaritan reduced price from changes to liability standards applicable to the donation of certain food;
- allow compostable products to have a green, beige, or brown stripe in lieu of requiring products to be at least partially tinted those colors; and
- require only food contact film products to be partially colored or partially tinted green, brown, or beige or to have a stripe of those colors, and instead require nonfood contact film products to be at least partially colored or tinted green or have a green stripe or band and to display the word "compostable."

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Environment & Energy):**

(In support) Reducing organic waste going to landfills will reduce methane emissions. Methane is a potent greenhouse gas (GHG), and landfills are major sources of methane emissions. Addressing methane emissions is a key step to achieving state GHG emission limits. Food waste is a significant part of the climate crisis, and preventing food waste by connecting extra food with food rescue organizations is a high priority action to reduce organic waste. Significant volumes of organic waste are still being landfilled or incinerated, instead of composted, anaerobically digested, or otherwise managed in ways that reduce GHG emissions. Of those organic materials sent to landfills, a significant percent is food waste. This bill reduces barriers to donating surplus food by clarifying and expanding liability protections for people that donate extra food. Food banks will need infrastructure and other support to expand access to nutritious food to the million people in Washington that do not currently have consistent access to it. To ensure composting facilities have a market for the products they produce, local governments need to commit to purchasing some of the organic products from the organic wastes that they generated. Local governments must support local sources of compost. The grant program contained in this bill to encourage composting on farms was widely supported when enacted in 2020, but vetoed due to budget concerns. Compost facilities employ more people than do landfills, in addition to their environmental benefits. Municipal compost helps restore soil health, and has both municipal and agricultural application potential. This bill helps site composting and other organic material management facilities, in addition to making their operations more financially stable. Reducing contamination of plastic materials in compost will help

make compost a more attractive product to farmers and other consumers. Color marking of compostable products is the best way to reduce consumer confusion. Plastic produce stickers are a significant source of plastic contamination of organic material waste. Not all facilities are able to compost products that meet the state's composting standards.

(Opposed) Businesses should not be required to compost if there is not adequate infrastructure to manage their organic wastes. The new requirements for organic waste management will be expensive for counties to implement, and are not accompanied in the bill by funding. Changes to the solid waste system have the potential to reduce local government revenues to manage solid waste. Tipping fees and waste collection rates in California have increased by significant amounts as a result of policies similar to those being proposed in this bill. Developing organic material management infrastructure requires both government and private sector investments that have not happened yet. Some proposals in this legislation were contained in the Department of Ecology's (Ecology) Use Food Well Washington plan and are well supported by stakeholders. Businesses support the goal of clearer labeling on products, but the proposal to restrict the use of green and brown on non-compostable products goes too far. Current product labeling laws should be enforced before expanding them. Restricting plastic produce stickers is not feasible given the interstate and international nature of food supply chains. Grocery stores support the bill's provisions providing a safe harbor from liability for donations of extra food. The treatment of agriculture-derived wastes under several of the bill's provisions should be revisited to avoid unintended consequences.

(Other) Ecology worked on many of the policy proposals in the bill as part of its Use Food Well Washington report, including the proposal to establish the Washington Center for Sustainable Food Management. Ecology is concerned about a few of the proposals in the bill, including writing model solid waste ordinances for local governments, and the institution of composting requirements while existing capacity to manage organic materials is limited. The methane from organic waste in many landfills is captured, collected, and turned into renewable energy. Washington's compost labeling standards should be consistent with national standards organizations. Some compostable packaging products will want to retain the option of producing an untinted, clear product so as to showcase the food or drink product the packaging contains. The goal of reducing organic materials to landfills by 75 percent by 2030 will be very hard to achieve and will require many new composting and organic material management facilities that are not yet in place. The labeling requirements and compost procurement provisions are important to the waste management industry.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) This bill would help get organic materials, such as food waste and yard waste, out of landfills and into compost facilities. Organic materials rot and create methane when in landfills. This bill is an interconnected effort to address organic materials. Organic materials need more collection efforts and more facilities that can process them. This bill

would get more food to people who are hungry and is a climate imperative. During the worst of the pandemic, millions have sought food donations in their communities. A related tragedy is that there is a lot of food that ends up in landfills, causing waste and greenhouse gas emissions. This bill would help prevent food waste with improvements to food donations statewide and serves as a climate crisis intervention at the same time.

(Opposed) Changes to this bill made in the policy committee are appreciated, but there is still no dedicated funding for counties. The requirements for counties in the bill would require huge investments in infrastructure and planning. More time is needed to understand the bill's ramifications for infrastructure needs. In California, similar policies have placed a heavy burden on ratepayers. Waste disposal is price-sensitive, and waste disposal fees are regressive in nature.

(Other) Although it is commendable to get food waste and yard waste out of landfills, this bill also covers sewage solids, which should not be spread on land. The legislature should take food waste issues step by step, and first study and report on food waste in communities. Contaminants should be allowed time to decompose before being used.

**Persons Testifying (Environment & Energy):** (In support) Representative Joe Fitzgibbon, prime sponsor; Pat McLaughlin, King County; Kate White Tudor, National Resources Defense Council; Heather Trim, Zero Waste Washington; Aaron Czyzewski, Food Lifeline; Martin Gibbins, League of Women Voters of Washington; Deepa Sivarajan, Climate Solutions; Karen Dawson, Cedar Grove; Janet L. Thoman, Compost Manufacturing Alliance; and Troy Lautenbach, Skagit Soils.

(Opposed) Holly Chisa, Northwest Grocery Association; Samantha Louderback, Washington Hospitality Association; Peter Godlewski, Association of Washington Business; Bre Elsey, Washington Food Industry Association; and Paul Jewell, Washington State Association of Counties.

(Other) Dave Warren, Klickitat Public Utility District; Laurie Davies, Department of Ecology; Rhodes Yepsen, Biodegradable Products Institute; and Vicki Christophersen, Washington Refuse and Recycling Association.

**Persons Testifying (Appropriations):** (In support) Heather Trim, Zero Waste Washington; and Aaron Czyzewski, Food Lifeline.

(Opposed) Paul Jewell, Washington State Association of Counties.

(Other) Darlene Schanfald.

**Persons Signed In To Testify But Not Testifying (Environment & Energy):** Rodd Pemble, Sanitary Service Company; Jody Snyder, Waste Connections; Marina Morokhova; Quinn Apuzzo, Recology; and Josh McDonald, Washington Wine Institute.



**Persons Signed In To Testify But Not Testifying (Appropriations):** None.