
Environment & Energy Committee

E2SSB 5022

Brief Description: Managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and addressing plastic packaging.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Das, Rolfes, Carlyle, Dhingra, Keiser, Kuderer, Lias, Lovelett, Nobles, Nguyen, Pedersen, Saldaña, Salomon, Stanford, Wellman and Wilson, C.).

Brief Summary of Engrossed Second Substitute Bill

- Establishes minimum postconsumer recycled (PCR) content, registration, and reporting requirements for plastic beverage containers, household cleaning and personal care product containers, and plastic trash bags, and establishes penalties for failure to achieve PCR requirements.
- Preempts certain local PCR requirements.
- Requires the Department of Commerce to convene a stakeholder advisory committee related to PCR requirements.
- Requires state agencies to purchase plastic trash bags only from plastic trash bag producers that comply with minimum recycled content requirements.
- Restricts the sale of certain expanded polystyrene products, beginning June 1, 2023.
- Allows food service businesses to provide plastic utensils, straws, condiment packaging, and beverage cup lids to customers only upon request.
- Requires the Department of Ecology to administer, implement, and enforce PCR requirements, expanded polystyrene prohibitions, and upon-request food service product requirements.

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.

- Amends labeling requirements for plastic bottles and containers.

Hearing Date: 3/11/21

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 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 code identifying the resin type must be placed within three triangulated arrows of a specified design. 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.

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, repackage, or sort materials for the purposes of recycling.

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 Engrossed Second Substitute Bill:

Plastic Data Registration, Labeling, and Reporting.

Beginning April 1, 2022, plastic beverage container manufacturers and plastic trash bag producers selling or distributing in Washington must register with the Department of Ecology (Ecology), either individually or through a third-party representative. Registration information must include a list of beverage manufacturers and brand names. By January 1, 2023, beverage container manufacturers and trash bag producers that have not registered with Ecology may not sell or distribute into Washington.

Beginning April 1, 2024, beverage manufacturers and trash bag producers must provide an annual report to Ecology including the amounts of virgin and postconsumer recycled (PCR) plastic content by resin type in beverage containers sold or distributed in Washington.

The same registration and reporting provisions that apply to beverage containers and trash bags largely apply to household cleaning and personal care product containers, except that the initial registration date for household cleaning and personal care products is April 1, 2024; the restrictions on the sale of products from non-registered manufacturers apply January 1, 2025, and annual reporting begins in 2026.

Manufacturers may request that information or records submitted to Ecology be kept confidential, under Ecology's processes for protecting confidential business information.

Plastic trash bag producers must begin labeling products sold or distributed in Washington with the name of the producer or a uniform resource locator or quick response code, beginning January 1, 2023.

Minimum Recycled Content Requirements for Plastic Beverage Containers, Trash Bags, and Household and Personal Care Product Containers.

Minimum recycled content requirements are established for beverage manufacturers, plastic trash bags, and household and person care product containers, as follows:

- For beverages other than dairy milk, the PCR requirements increase from 15 percent beginning in 2023 through 2025, up to 50 percent beginning in 2031.
- For dairy milk, the PCR requirements increase from 15 percent beginning in 2028 through 2030, up to 50 percent beginning in 2036.
- For household cleaning and personal care products, the PCR requirements increase from 15 percent beginning in 2025 through 2027, up to 50 percent beginning in 2031.
- For trash bags, the PCR requirements increase from 10 percent beginning in 2023 through 2025, up to 20 percent beginning in 2027.

Ecology may annually adjust, review, and determine whether to adjust minimum PCR requirements, after considering market conditions, recycling rates, and other specified factors.

Manufacturers of products that are subject to PCR requirements who do not achieve the PCR requirements are subject to penalties. Penalties are calculated based upon the amounts in pounds in aggregate of virgin plastic, PCR plastic, and other plastic used by manufacturers to produce covered containers, at a rate of 20 cents per pound of plastic below the amount of PCR plastic needed to achieve minimum PCR requirements. Ecology must consider granting penalty reductions based on specified factors.

Stakeholder Advisory Committee.

By May 1, 2021, the Department of Commerce must convene a stakeholder advisory committee to make recommendations on the development of PCR requirements for plastic packaging, with a specific focus on nine topics, including methods for determining responsible parties, registration of producers, and exemptions or exceptions. The Department of Commerce must submit a report to the Legislature with the recommendations of the advisory committee by November 15, 2021, including where general consensus has been achieved, and noting dissenting opinions. The Senate and the House of Representatives must jointly appoint at least one member to the advisory committee representing each of 30 specified types of organizations.

Expanded Polystyrene Prohibitions.

Beginning June 1, 2023, it is prohibited to sell in or into Washington three types of expanded polystyrene products: (1) portable containers designed for cold storage; (2) food service products; and (3) void filling packaging products. Ecology must provide technical assistance and guidance to manufacturers of expanded polystyrene products, as requested. Civil penalties for violations are established, but prior to assessing a penalty Ecology must issue at least two notices of violation.

Food Service Products Upon Request.

Beginning January 1, 2022, food service businesses may only provide plastic utensils, straws, condiment packaging, and beverage cup lids only upon request or after affirming that the customer wants the product. Beverage cup lids may be provided without a request for hot beverages, delivery services or pickup, or served via a drive-through. Utensils, straws, condiments, and beverage cup lids may be made available to customers using bins, cylinders, dispensers, or other self-service customer options. Civil penalties of between \$150 and \$2,000 per day are authorized, but Ecology must issue at least two notices of a violation prior to assessing penalties.

Preemption of Local Authorities.

A city, town, county, or municipal corporation may not implement local PCR requirements for plastic beverage containers, trash bags, and household cleaning and personal care products that are subject to minimum PCR requirements.

A city, town, county, or municipal corporation may establish local purchasing requirements that include PCR standards that exceed minimum state standards for plastic trash bags and for household cleaning and personal care product containers purchased by the local government or its contractor.

Beginning July 1, 2021, a city, town, county or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring a request of single-use food service products by a customer of a retail establishment.

Other.

Ecology must annually identify its costs for implementing PCR requirements applicable to beverage containers, household cleaning and personal care products, and trash bags. Ecology must equitably determine payment amounts by product manufacturers within each category that are adequate to cover Ecology's costs. Ecology may contract for the services required to implement PCR requirements, expanded polystyrene prohibitions, and other new duties.

Ecology may conduct audits and investigations to ensure compliance with PCR requirements. Ecology must annually publish on its website the compliance status of registered household cleaning and personal care and trash bag producers. Ecology must post information on its website regarding expanded polystyrene prohibitions and food service upon-request policies. Ecology may develop educational materials and resources for education and outreach. Ecology may adopt rules as necessary for all new duties.

The Pollution Control Hearings Board has jurisdiction to hear appealable Ecology decisions to set or adjust minimum PCR content for plastic packaging, Ecology decisions to impose penalties for violations of minimum PCR requirements, and penalties for violations of expanded

polystyrene prohibitions and food service product upon-request requirements.

State agencies must purchase plastic trash bags manufactured by plastic trash bag producers that meet minimum PCR requirements.

A Recycling Enhancement Account (REA) is created for penalties from PCR requirement violations. Expenditures from the REA must be used by Ecology to provide grants to local governments for supporting local solid waste and financial assistance programs.

A Recycled Content Account (RCA) is created for the payments to Ecology to cover Ecology's costs of implementing, administering, and enforcing PCR requirements.

Subject to appropriations, Ecology must contract with a research university or consultant to study polyethylene terephthalate and high-density polyethylene markets, including market conditions and opportunities, and data needs and tracking opportunities. If funding is provided for the study, it must be completed by 2029.

The codes for plastics 1 through 7 that must be displayed on plastic bottles and rigid plastic containers are no longer required to be placed within three triangulated arrows. Polyvinyl chloride (PVC) is identified as a type of vinyl plastic number 3.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

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