

SENATE BILL REPORT

SB 5219

As of January 28, 2021

Title: An act relating to the management of plastic packaging materials.

Brief Description: Concerning the management of plastic packaging materials.

Sponsors: Senators Stanford, Liias, Conway, Hunt, Keiser, Kuderer, Nguyen and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/28/21.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes minimum recycled content requirements for plastic packaging.
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SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: 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, required to be produced by October 31, 2020, was required to assess the:

- amount of plastic packaging produced or coming into the state;
- full cost of managing plastic packaging waste;
- final disposition of all plastic packaging sold into the state;
- costs and savings to all stakeholders in product stewardship programs implemented in other cities and solid waste companies;
- needed infrastructure to manage plastic packaging;
- contamination and sorting issues for the plastic packaging recycling stream; and
- existing stewardship organizations and databases useful to develop a program in Washington State.

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.

The report was also required 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 post-consumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

The report was further required to include options to meet plastic packaging reduction goals capable of being established and implemented by January 1, 2022.

Published in December 2020, the report includes ten policy recommendations, organized into four categories:

- three primary recommendations that require legislative action:
 1. extended producer responsibility policy framework for all consumer packaging and paper;
 2. deposit return system for all beverage containers;
 3. recycled content requirements for all plastic packaging;
- two legislative interim policy options that are supplemental to the primary recommendations:
 1. producer registry and packaging reporting;
 2. recycled content requirements for plastic beverage containers;
- three legislative policy actions that advance the goals in ways that complement the primary recommendations:
 1. recycled content requirements for trash bags;
 2. ban on problematic and unnecessary plastic packaging;
 3. the standard for customer opt-in for food service packaging and accessories; and
- two recommended agency activities that do not require legislative action:
 1. strengthen data collection on final destinations of materials sent for reprocessing;
 2. support development and adoption of reusable packaging systems.

Summary of Bill: Each year, a producer of plastic packaging must meet the following minimum postconsumer recycled content on average for the total amount of plastic packaging sold, offered for sale, or distributed in Washington effective:

- July 1, 2023, through December 31, 2026—no less than 15 percent postconsumer recycled plastic;
- January 1, 2027, through December 31, 2030—no less than 25 percent postconsumer recycled plastic; and
- on and after January 1, 2031—no less than 50 percent postconsumer recycled plastic.

"Plastic packaging" means packaging made from plastic, whether alone or in combination

with another material, including packaging that bonds plastic with other materials together, such as metal lids bonded to plastic bottles, blister packs combining plastic and paperboard, plastic-coated paper packaging, and aseptic containers, and is:

- used to protect, contain, or transport a commodity or product at any point from manufacture to its place of use by a consumer; or
- attached to a commodity or product or its container for the purpose of marketing or communicating information about the commodity or product, and which is capable of being removed and discarded when the product is put in use without adverse effect on the quality or performance of the product.

It includes packaging that is filled or unfilled and packaging that is intended to be sold as a product to customers.

"Producer" means a person that:

- has legal ownership of the brand, brand name, or cobrand of a product to which plastic packaging is applied, that is sold in, into, or distributed for use in Washington State; or
- is the importer of a product into Washington State, to which plastic packaging has been applied, for sale in, into, or distribution for use in Washington State.

Ecology must exempt:

- plastic packaging and food serviceware provided for serving prepared food via a drive-through; in a packaged form for takeout or takeaway; or from food trucks, stands, delis, or kiosks that may or may not provide shelter or seating for consumers; and
- plastic bags subject to postconsumer recycled content requirements.

A city, town, county, or municipal corporation may not implement local recycled content requirements for plastic packaging that are inconsistent with minimum postconsumer recycled content as required under the act. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements, may not be enacted and are preempted.

Beginning in 2021, and every other year thereafter, or at the petition of the plastic packaging industry but not more than annually, Ecology must consider whether the minimum postconsumer recycled content requirements should be reduced.

If Ecology determines that a minimum content requirement should be adjusted, the adjusted rate must be in effect until a new determination is made or upon the expiration of the content requirement's effective period, whichever occurs first.

Ecology may not adjust the minimum content requirements above the applicable minimum percentage for the applicable compliance period. For the 25 percent and 50 percent

compliance periods, Ecology may not adjust the minimum content rate below 15 percent.

In making a determination, Ecology must at least consider the following:

- changes in market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability;
- recycling rates;
- the availability of recycled plastic suitable to meet the minimum content requirements;
- the capacity of recycling or processing infrastructure;
- the progress made by plastics packaging manufacturers in meeting the minimum content requirements; and
- the carbon footprint of the transportation of the recycled resin.

Beginning June 30, 2021, until June 30, 2022, 4 percent of expenditures from the Waste Reduction, Recycling, and Litter Control account must be used to implement and enforce the act.

Until June 30, 2024, \$1 million from fees on plastic packaging producers unable to meet the minimum content requirements are deposited in the account to recoup the 4 percent allocation.

By March 1, 2022, and annually thereafter, a plastic packaging producer, under penalty of perjury must report to Ecology, in pounds and by resin type, the amount of virgin plastic and postconsumer recycled plastic used for plastic packaging sold, offered for sale, or distributed in Washington State in the previous calendar year.

Ecology must keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment that Ecology gathers or becomes aware of through the course of conducting compliance audits or investigations.

Beginning July 1, 2023, a plastic packaging producer that does not meet the minimum content requirements, based upon the amount in pounds and in the aggregate, is subject to an annual fee.

Ecology must adopt rules to implement a fee that will not exceed \$200 per ton. Ecology may structure fees to lower fees for producers that achieve partial compliance. The fee must be structured as follows:

- from July 1, 2023, through December 31, 2026, the fee structure implemented must be estimated to raise no less than \$40 million per biennium and no more than \$60 million per biennium;
- from January 1, 2027, through December 31, 2030, the fee structure implemented must be estimated to raise no less than \$30 million per biennium and no more than \$50 million per biennium; and
- on and after January 1, 2031, the fee structure implemented must be estimated to raise

no less than \$20 million per biennium and no more than \$40 million per biennium.

Ecology must publish an annual report containing an annual estimate of the revenue to be raised by the fee, the amounts and quantities of plastic packaging subject to the fee, and the number of producers currently and expected to be in compliance with the act.

Fees may be appealed to the Pollution Control Hearings Board.

Twenty-five percent must be used for grants to owners or operators of material recovery facilities that process municipal solid wastes.

Seventy-five percent must be distributed to cities and counties for developing and implementing:

- actions or investments to improve recycling infrastructure and the recyclability of plastic packaging through curbside recycling programs;
- depots or collection points for plastics not effectively collected or processed through curbside programs; and
- solid waste planning, management, regulation, enforcement, technical assistance, and public education.

Ecology must develop rules governing distribution of funds in conjunction with an advisory committee that includes five members appointed by the Washington Association of County Solid Waste Managers and five members appointed by the Washington State Association of Local Public Health Officials.

Ecology must establish a stakeholder advisory committee to recommend exemptions, exceptions, or alternative compliance requirements to the minimum recycled content requirements that include but are not limited to plastic packaging:

- that is subject to federal requirements;
- that is determined by Ecology to exhibit environmentally superior performance when it does not contain postconsumer recycled content or contains smaller amounts of postconsumer recycled content than established by the requirements;
- from producers with an annual sale or distribution of less than one ton of plastic packaging in Washington;
- associated with a single point of retail sale in Washington; or
- from women or minority-owned plastic packaging producers, if Ecology determines such an exemption is in the public interest.

The committee must include representatives from Ecology, Commerce, the Utilities and Transportation Commission (UTC), cities, counties, public and private sector recycling and solid waste industries, a UTC-regulated collection company, a material recovery facility operator, a company that provides curbside recycling service under a municipal contract, a trade association that represents the private sector solid waste industry, recycled plastic feedstock users, and environmental organizations.

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: PRO: We need manufacturers to use postconsumer recycled materials in order to make recycling economically feasible and increase recycling. It is a little bit of a chicken and egg problem to create the feedstock and the demand for the feedstock.

The bill puts producers at the table and creates financial incentives in the system. It provides support to local governments to build out recycling programs.

Counties are strongly in favor of minimum postconsumer requirements for stabilizing the market for recyclables. We see recycled plastics as a resource being wasted and an opportunity lost.

Unlike broad EPR, this bill creates strong markets for recycling plastics. This is really product stewardship, and requires producers to consider recyclability of packaging through eco modulation fees.

CON: A high priority with pesticide manufacturers is safety, we must meet standards by the federal government and safety studies take years to complete. Landscapers have very few pots and trays with recycled content available. There is concern about added costs and availability of products.

We are concerned the recycled content mandates could have unintended consequences on recycling markets. We would like to see the fee funding go towards infrastructure and market development for certain products.

The bill does not allow producers to use all sources of polystyrene. One of the principal sources is coat hangers. We should broaden the minimum requirement to use recycled plastic from any source, not just packaging.

Ecology only recently completed its study on plastic packaging. The logical next step is a comprehensive discussion with all stakeholders, including manufacturers and suppliers.

We feel the bill does not address key elements affecting packaging producers ability to address systematic challenges. The bill only funds collection. A robust system should also separate funds by material origin.

OTHER: Recycled content requirements do not by themselves promote circularity but also need availability of high quality plastic resins for food grade standards. Collection is key to provide this material to increase the quantity and quality of this material.

Ecology is concerned about how funding is generated and distributed. The Ecology regulatory program strives to achieve compliance and do not believe funding should rely on noncompliance.

This bill would put dairy producers at competitive disadvantage with other states. We have some of the smallest profit margins of consumer products.

We believe this bill's strong minimum content provisions are more financially and environmentally sustainable as opposed to banning products. However, there are strict federal regulations for medications and food that make the content requirements difficult to achieve. We would be interested in ensuring mandated dates and rates are feasible and achievable based on market conditions, availability of recycled resins, and FDA requirements.

There are gaps in that rates should cover all packaging, the funding lacks performance standards for recycling and collection, there is no strong incentive reduce waste reduction or meet environmental and health standards, and there are no provisions for the reduction of styrofoam.

Not every plastic resin is created equal. It is about finding the right number critical to ensure adequate supply is available to meet the mandate.

We are concerned there is not a delineation among resins. PTE and high density have had a structure for years.

Our ask is for language to exempt retail entities as producers. Reporting requirements and penalty of perjury may come upon our stores and we may not know the answer those questions for packaging provided by someone else.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Vicki Christophersen, Washington Refuse and Recycling Association; Paul Jewell, Washington State Association of Counties; John Chelminiak, Waste Management.

CON: Heather Hansen, Washington Friends of Farms and Forests; Lauren Aguilar Ameripen, citizen; Brad Braddon, Tekni-Plex; Amber Carter, Campaign for Recycling and the Environment; Philip Rozenski, Novolex.

OTHER: Brad Boswell, Washington Beverage Association; Laurie Davies, Department of Ecology; Duane Naluai, Darigold; Peter Godlewski, Association of Washington Business; Tim Shestek, American Chemistry Council; Bruce Wishart, Zero Waste Washington, Puget Soundkeeper; Tom McBride, Dart Container; Steve Alexander, Association of Plastic

Recyclers; Holly Chisa, Northwest Grocery Association.

Persons Signed In To Testify But Not Testifying: No one.