
Environment & Energy Committee

HB 1131

Brief Description: Improving Washington's solid waste management outcomes.

Sponsors: Representatives Berry, Doglio, Reed, Fitzgibbon, Taylor, Pollet, Ryu, Ortiz-Self, Ramel, Callan, Macri, Simmons, Chopp, Lekanoff, Duerr, Wylie, Stonier and Kloba.

Brief Summary of Bill

- Requires producers of certain paper products and packaging (covered PPP) to participate in and fund the operations of a producer responsibility organization (PRO) to collect and manage covered PPP from consumers and carry out other specified activities.
- Makes changes to minimum postconsumer recycled content (PCRC) requirements, including: requiring additional types of products to meet PCRC requirements; moving responsibility for the registration and reporting of covered PPP products that are also to PCRC requirements to the PRO; and amending existing PCRC requirements for products subject to PCRC requirements that are not covered PPP.
- Provides for producers of certain beverage containers to satisfy producer responsibility obligations for the beverage containers through the formation of a distributor responsibility organization (DRO) and the establishment of a deposit return system (DRS)

Hearing Date: 1/17/23

Staff: Jacob Lipson (786-7196).

Background:

Solid Waste Management in Washington.

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.

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. County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element, and a recycling contamination reduction and outreach plan.

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.

Extended Producer Responsibility and Product Stewardship Programs.

The Legislature has enacted laws that require the establishment of product stewardship programs for the management of five types of products: (1) electronic products; (2) light bulbs that contain mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; and (5) paint.

In general, the state's product stewardship programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered products. Ecology is responsible for the oversight of the state's product stewardship programs, with the exception of the Pharmaceutical Stewardship Program, which is overseen by the Department of Health.

Plastics and Packaging Studies.

In 2019, the Legislature directed Ecology to evaluate and assess the amount and types of plastic packaging sold in and 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:

- achieving 100 percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;
- achieving at least 20 percent postconsumer recycled content (PCRC) in packaging by January 1, 2025; and
- reducing 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.

In January 2023, Ecology submitted a report to the Legislature from a contracted consultant that

was mandated by a 2022 operating budget proviso. The report evaluates the amount and types of consumer packaging and paper products sold in and into Washington, and the recycling rates for those materials. The report also includes policy recommendations for how to improve the management of certain problematic plastic and paper materials that are often littered, a source of environmental pollution, disruptive to sorting and recycling infrastructure, or not recyclable or compostable at scale.

Minimum Recycled Content Requirements.

In 2021, the Legislature established minimum recycled content requirements applicable to three main categories of plastic products or products in plastic containers: trash bags; household and personal care product containers; and plastic beverage containers. Unique minimum PCRC rates and timelines over which the minimum recycled content rates increase apply to:

- beverages other than wine in 187 milliliter plastic beverage containers, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2031;
- wine in 187 milliliter plastic beverage containers and dairy milk, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2036;
- household cleaning and personal care product containers, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2031; and
- plastic trash bags requiring 10 percent PCRC in 2023, increasing to 20 percent by 2027.

Beginning in 2025, Ecology may annually adjust, review, and determine whether to adjust minimum PCRC requirements for the following year. Ecology may do so for a type of container within a category of covered products after considering market conditions, recycling rates, and other specified factors. Manufacturers of products that are subject to PCRC requirements who do not achieve the PCRC requirements are subject to penalties. Penalties are calculated based upon the amounts in pounds in aggregate of virgin plastic, PCRC 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 PCRC plastic needed to achieve minimum PCRC requirements.

Ecology is currently in the process of adopting rules to implement the minimum PCRC requirements. Producers subject to minimum PCRC requirements were required to register with Ecology and pay fees to cover Ecology's administrative costs related to minimum recycled content standards beginning in 2022.

Litter Tax.

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, including:

- food and groceries;
- beverages;
- cigarettes and tobacco products;
- newspapers and magazines;
- household paper and paper products;

- glass, metal, and plastic containers;
- cleaning agents; and
- nondrug drugstore sundry products.

Programs funded by the litter tax under the Act include: litter collection efforts by state agencies including Ecology; and state assistance of local government waste reduction, composting, and recycling programs.

The Pollution Control Hearings Board.

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:

Producer Responsibility for Packaging and Paper Products.

Producers of paper products and packaging (covered PPP) must participate in a producer responsibility organization (PRO) that is required to carry out specified activities, including the implementation of an approved producer responsibility organization plan.

Producers are defined to include specified entities associated with covered PPP but do not include government entities, nonprofit organizations, or entities that sell, distribute, or import de minimis volumes of paper products or packaging.

Packaging is defined to include various materials, including single-use items that facilitate food or beverage consumption, but does not include materials used for long-term use associated with durable products, materials used to package federally-regulated pesticide products, or certain products that are temporarily excluded after a determination is made by the Department of Ecology (Ecology).

Significant program implementation deadlines applicable to producers and the PROs in which they participate include:

- by January 15, 2024, producers that offer for sale, sell, or distribute covered PPP in Washington must join a PRO registered with Ecology or register as a PRO. Registrations must be updated annually with Ecology;
- beginning in June of 2024, PROs must submit an annual payment to Ecology to cover Ecology's administration and oversight costs and other specified costs related to the program implemented by a PRO, based on an annual workload analysis completed by Ecology beginning in April, 2024;
- beginning July 1, 2026 or six months after the adoption of Ecology rules, whichever is later, registered PROs must submit an implementation plan to Ecology for approval;
- beginning July 1, 2027, or within six months after Ecology's approval of a submitted plan, whichever is later, PROs must begin implementing the approved plan; and
- beginning July 1, 2028, PROs must submit an annual report to Ecology.

Additional plan implementation logistical details apply to PROs that register with Ecology after 2026. Ecology must review and may approve submitting plans and annual reports, and additional logistical details are provided in the event that a submitted plan or report is not approved by Ecology. Specific duties and authorities are assigned to Ecology, including the authority to adopt rules, to issue civil penalties and orders, and carry out specified tasks, such as:

- the maintenance of a public website;
- the completion of a performance rates study by April 1, 2024 that recommends performance rates for the reuse and recycling of covered PPP; and
- the completion of a statewide needs assessment by July 1, 2025 that evaluates the costs, gaps, and needs for recycling services and infrastructure for covered PPP, as well as other components of the PRO programs to be implemented for covered PPP;

Ecology must seek to harmonize its adopted rules with regulatory standards, exemptions, reporting obligations, and other compliance requirements of other states that have adopted similar programs, except where conflicts exist with Washington program requirements established in statute.

An advisory council is created, with membership representing specified interests to be appointed by Ecology. The advisory council is given specified responsibilities with respect to aspects of PRO program implementation and Ecology's oversight of those programs, including: (1) responsibility for advising or commenting on the performance rates study, and the needs assessment prior to their completion; and (2) the program plans and annual reports submitted Ecology, prior to Ecology's determination of whether to approve plans and reports. For certain aspects of program implementation, the PRO must also seek input from the Utilities and Transportation Commission (UTC). PROs implementing a plan are also obligated to carry out stakeholder consultation activities apart from soliciting input from the advisory council, including requirements to maintain a public website and solicit and respond to stakeholder comment received prior to the submission of a new, updated or revised plan.

PRO plans for covered PPP must contain specified components governing the major components of the producer responsibility program for covered PPP that the PRO is obligated to implement, including: (1) information regarding program financial structures and investments in recycling infrastructure; (2) education and outreach activities; and (3) collection of covered PPP. The plan must also include other details information regarding the products managed through the PRO, and other waste reduction and recycling outcomes to be achieved by the PRO. Initial plans submitted to Ecology must address no more than three calendar years of program implementation, but subsequent plans may have a duration of up to five years. Plans must include a contingency plan component that demonstrates how plan activities will be carried out by an entity other than the PRO in the event that the PRO is unable to carry out plan implementation for specified reasons.

PRO plans, and the program implemented by a PRO, must provide for:

- the collection and management of covered PPP in a manner that meets specified standards,

including:

- environmental performance standards to be achieved by any recycling technologies other than mechanical recycling; and
- the reporting of information to Ecology by material recovery facilities and other processing facilities managing covered PPP under the program;
- the achievement of specified types of recycling and reuse performance rates proposed in the PRO's Ecology-approved plan;
- full funding of the PRO's operations in a manner that does not involve a point-of-sale fee charged to consumers, but that is instead based on a system of fees collected from participating producers of covered PPP, including:
 - a de minimis level at which no fees are charged;
 - additional charges for producers of postconsumer recycled content (PCRC) products, who have additional regulatory obligations managed by the PRO; and
 - the use of eco-modulation factors to incentivize the use of design attributes that reduce the environmental impacts of covered PPP;
- activities to make convenient collection services for covered PPP that are designated for collection under the plan, including:
 - curbside collection to residential customers wherever curbside garbage collection services are provided to those customers; and
 - the use of permanent collection facilities in other specified circumstances;
- the funding of investments in reuse and recycling infrastructure and market development, as needed to achieve the convenience standards for collection services, management standards for covered PPO collected by the program, performance outcomes identified in the plan, and any other infrastructure gaps identified by the needs assessment;
- education and outreach activities, including the performance of specified types of activities and the development of certain materials for communicating with the public; and
- the coordination of multiple plans and programs on specified components of program implementation, such as education and outreach activities and the identification of covered products for collection, in the event that multiple PROs form and register with Ecology to implement a plan.

Each PRO must submit an annual report on the prior calendar year's program implementation activities. The annual report must contain data, descriptions and information sufficient to allow Ecology to determine whether the PRO has fulfilled its plan and program implementation obligations, and other specified types of information. Prior to the submission of the annual report, all nonfinancial data and information must be audited annually by an accredited third party, and a separate independent financial audit performed by an independent auditor must be performed and submitted to Ecology.

Local governments that use contracting authority for recyclable material collection are not obligated to participate in a PRO's plan. Existing city and county authorities to establish solid waste systems are not limited by the establishment of PROs for covered PPP, including the authority to include materials in curbside collection that are not part of the statewide list of covered PPP designated for collection under the PRO's program. Curbside collection of

recyclable materials in areas where the UTC oversees the collection of solid waste must be provided by companies that hold UTC-issued solid waste certificates. PROs must provide reimbursement to UTC-certified solid waste service providers in accordance with rates approved by the UTC. To be eligible for reimbursement from a PRO, a UTC-certified solid waste company must provide service that offers single-family and multi-family residential recyclable material collection services for covered PPP wherever garbage services are offered and aligns with any other PRO-established service standards.

Government entities may enter into contractual agreements with PROs for purposes of cost reimbursement. PROs must reimburse government entities for services delivered in accordance with base cost formulas established in the PRO's plan for curbside collection services, and in accordance with other reimbursement rates for non-curbside collection services that must also be established in the PRO's plan. Government entities that receive reimbursement for costs incurred in delivering curbside collection services must report or publish reimbursed costs to residents annually and as part of any solid waste rate increase notifications.

The source separation strategies of waste reduction and recycling elements contained in a local government's solid waste plans must include PRO programs for covered PPP, and any deposit return systems (DRS) for beverage containers operated by a distributor responsibility organization (DRO). Solid waste management plans may reference PRO plans to fulfill source separation strategy requirements beginning in 2026, and must reference PRO and DRO plans beginning in 2027 for purposes of the local government's recycling contamination reduction and outreach plan element.

Contractual services performed for a PRO other than curbside collection services must meet certain other standards related to procurement practices, operating and labor standards, and other criteria.

PROs and material recovery or processing facilities may request that information submitted to Ecology be kept confidential, and Ecology must keep that information confidential if not detrimental to the public interest. PROs may not use funds collected for purposes of implementing a plan for certain purposes, such as payment of administrative penalties or litigation.

Ecology may impose civil penalties on persons in violation of requirements. If a PRO does not meet a significant requirement, Ecology may additionally issue orders to a PRO, revoke the PRO's plan approval, require a PRO to revise and resubmit a plan, or report additional information. Penalties from Ecology are appealable to the Pollution Control Hearings Board (PCHB).

The UTC must review PRO reimbursement of regulated service providers, and must require UTC certificate holders to implement services designated by a PRO in an approved plan for the management of covered PPP. UTC-regulated solid waste companies must meet service standards established in an approved PRO plan for the management of covered PPP. Services

contained in the base rate charged by solid waste collection companies include costs related to the implementation of services designated by a PRO in an approved plan. Covered PPP and beverage containers under a DRS are excluded from the recyclable materials collected by a UTC-regulated solid waste collection company that the company may retain up to 50 percent of the revenue from. The UTC must conduct prudency reviews of the base cost formulas proposed by PROs for calculating reimbursement rates to be paid to government entities.

Postconsumer Recycled Content Requirements.

The compliance logistics for covered PPP whose producers participate in a PRO and which are subject to existing minimum PCRC requirements, including plastic beverage containers and personal care and household cleaning product containers that are not regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), are shifted so that registration, annual fee payment, reporting, and penalties related to PCRC requirements are managed through the PRO, rather than directly by Ecology.

Ecology retains direct management responsibility for PCRC requirements for products other than covered PPP that remain subject to PCRC requirements such as plastic trash bags and FIFRA-regulated household cleaning and personal care products. For products directly managed by Ecology, producers must submit an annual certificate of compliance to Ecology, rather than registering with Ecology and reporting in the manner required under current law.

The method of imposing penalties for violations of PCRC requirements is also changed from a per-pound of underperformance penalty to a per-day-of-violation penalty.

The scope of products subject to minimum PCRC requirements is expanded to include new products, some of which are covered PPP products and whose PCRC obligations are managed through the PRO, and some of which are not covered PPP products and whose PCRC obligations are managed directly by Ecology.

The following products which are to be managed through the PRO have new PCRC requirements established for their plastic containers:

- nonprescription drugs, newly non-excluded from the scope of household cleaning and personal care products, and thus subject to that existing category of PCRC standards;
- plastic tubs for food products, requiring 10 percent PCRC 2026-2030 and 30 percent PCRC beginning in 2031;
- single-use plastic cups: polypropylene cups requiring 15 percent PCRC 2029-2030 and 25 percent PCRC beginning in 2031; and other types of single-use plastic cups requiring 20 percent PCRC 2029-2030 and 30 percent PCRC beginning in 2031;
- thermoform plastic containers: (1) packaging for consumable goods requiring 10 percent PCRC 2031-2035, and 30 percent beginning in 2036; (2) packaging for durable goods requiring 30 percent beginning 2036; and
- cannabis products requiring 25 percent PCRC from 2025-2030 and 50 percent PCRC beginning in 2031, subject to amendment at the recommendation of the Liquor and Cannabis Board. The Liquor and Cannabis Board is also given a role in establishing

PCRC requirements applicable to cannabis products.

The following products which are to be overseen by Ecology have new requirements established for their plastic containers:

- plastic plant pots and trays, requiring 30 percent PCRC from 2026-2030 and 80 percent PCRC beginning in 2031; and
- roll carts, requiring 25 percent PCRC beginning in 2024 including 10 percent derived from curbside recycling programs. Oversight of roll cart PCRC requirements is done in a manner distinct from the other Ecology-overseen PCRC requirements applicable to plastic pots and trays, plastic trash bags, and FIFRA-regulated personal care products.

De minimis producers are made exempt from PCRC requirements, but must annually notify the PRO or Ecology, as appropriate, of the producer's de minimis status. For annual reporting regarding PCRC products managed through the PRO, the PRO must include a certification from an accredited independent third party verifying the quantity and dates of PCRC material purchases. Ecology must review and determine whether to approve PCRC annual reports. Producers of PCRC products may petition for temporary exclusions and PCRC rate adjustments for an upcoming year in a manner similar to the processes available to PCRC products directly overseen by Ecology, but as part of the PRO's annual report covering the PRO's PCRC activities for the previous calendar year. For covered PPP, a PRO may establish minimum PCRC requirements for plastic products, or increase the minimum PCRC requirements for plastic products or expedite the timeline for the achievement of PCRC rates for plastic products.

Deposit Return System.

As an alternative to satisfying its covered PPP obligations for qualifying beverage containers, a PRO is not required to consider qualifying beverage containers to be covered PPP upon the establishment of a deposit return system (DRS) for qualifying beverage containers by a distributor responsibility organization (DRO). An individual beverage distributor may form a DRO and implement a DRS, or a group of beverage distributors representing a majority of beverages sold in qualifying beverage containers may form a DRO. Qualifying beverage containers include individual, separate, sealed glass, metal, or plastic bottles or cans other than cartons, foil, pouches, drink boxes, or metal containers that require a tool to be opened, and exclude containers for dairy milk, infant formula, or other beverages excluded by Ecology rule.

Four months after a DRO other than a DRO implemented by a single beverage distributor notifies Ecology of its intent to operate a DRS, each distributor of qualifying beverage containers must join the DRO or act as its own DRO. Beverage distributors that do not join or independently act as a DRO are prohibited from selling beverages in qualifying beverage containers. DROs must register with and submit registration information to Ecology. A DRO must implement a DRS within two years of registration with Ecology. The advisory council created for covered PPP is also assigned specified consultation duties with respect to the DRO's implementation of a DRS.

Prior to implementing a DRS, DRO must submit a DRS plan to Ecology for approval. The plan

must identify methods for collecting qualifying beverage containers, impose a refund value for qualifying beverage containers, describe various significant aspects of DRS implementation, and contain specified information about the DRO and member distributors. Plans must include a contingency plan component that demonstrates how plan activities will be carried out by an entity other than the DRO in the event that the DRO is unable to carry out plan implementation for specified reasons.

Each qualifying beverage container must have a refund value of 10 cents. Crushed, broken, or contaminated containers are not required to be paid the 10 cent refund. Every beverage container must have embossing, a stamp, label, or other method that communicates the value of the container. Manufacturers, distributors or importers of qualifying beverage containers that fail to pay a DRO the refund value of beverage containers is liable to the DRO for triple the unpaid refund value.

Ecology may adopt rules to establish an additional premium refund value paid to nonprofit organizations that serve very low-income individuals who rely on regular container refunds through the DRS as a source of daily funds, based on the premium refund process proposed in a DRO's plan. DROs may not use unclaimed deposits, commodity sale revenues from collected materials, or other funds for specified purposes, including the payment of administrative penalties or litigation.

Among other requirements, a DRO's plan and DRS implementation must:

- demonstrate that all qualifying beverage containers are designed to be reusable or recyclable by 2031;
- achieve performance requirements, including a minimum of 60 percent reuse or recycling of qualifying beverage containers by 2028, a minimum of 80 percent reuse or recycling by 2031, and minimum reuse requirements that begin at five percent by 2028 and increase to 25 percent by 2035;
- provide convenient bulk drop-off options for bagged qualifying beverage containers at geographically dispersed locations in Washington that are convenient to locations that sell beverages;
- use reimbursable drop off bags made of 50 percent recycled content for the collection of qualifying beverage containers;
- establish at least 270 drop-off sites in Washington, distributed by county in proportion to qualifying beverage sales, and paid for in full by the DRO;
- not require retail establishments or publicly owned facilities to accept returned qualifying beverage containers or to allow a bag-drop site at the dealer or publicly owned facility;
- manage qualifying beverage containers in a manner consistent with the state's waste management hierarchy;
- include measures to track and report the responsible management of beverage containers in the DRS;
- invest the entire value of unclaimed refunds of qualifying beverage containers for investments in the operations and infrastructure for recycling qualifying beverage containers;

- accept and pay the full refund value of qualifying beverage containers presented to it by material recover facilities, government entities, and other processing facilities if the containers have been collected and separated in accordance with DRO-established standards; and
- require a demonstration of environmental impacts prior to the use of any non-mechanical recycling of qualifying beverage container material.

DROs must submit annual reports to Ecology covering the previous year's implementation of the DRS. The annual report must include specified information, including independently audited financial statements. Contractual services performed for a DRO must meet certain other standards related to procurement practices, operating and labor standards, and other criteria.

Ecology may adopt rules pertaining to DRS operations. DROs must pay Ecology annual fees based on a workload analysis covering Ecology's oversight and other specified costs. Ecology is assigned certain roles and responsibilities with respect to DRS oversight, including DRO registration, the requirement to review plans and the authority to approve plans in a manner consistent with specified logistical and substantive criteria, and the authority to require a DRO to conduct independent audits to verify redemption rates. DROs must pay a civil penalty of 10 cents per unredeemed container under the performance requirements, and Ecology may impose additional civil penalties and take other enforcement actions against a DRO, which are appealable to the PCHB. Ecology must also create and administer a curbside revenue augmentation fund which, for the first five years in which a DRO operates a DRS, must make payments to reimburse local governments or operators of curbside collection services from verified losses of the value of scrap material after the establishment of the DRS.

Other Provisions.

Covered PPP of products may not make misleading or deceptive claims about product recyclability. Certain types of claims are specified to be misleading or deceptive, or to not be considered misleading or deceptive. Federal criteria may be adopted in lieu of these requirements. Local governments are prohibited from enacting ordinances prohibiting products from making specified claims about the recyclability of products.

Ecology may participate in the development and operation of a regional or multistate clearinghouse for the purposes of facilitating laws and rules on packaging and paper products, including EPR requirements, PCRC requirements, and requirements established by other specified state laws that regulate covered PPP, including laws regulating the toxic content of PPP. Ecology may direct producers to register and submit data, reports, fees, and payments to the clearinghouse in lieu of Ecology.

By December 1, 2025, Ecology must contract with an independent third party to complete a feasibility study to: identify options to improve the convenience experienced by consumers with unwanted products or packaging covered by product stewardship, extended producer responsibility, or takeback programs; and consider tradeoffs associated with options that might improve outcomes for consumers and the management of unwanted products. Ecology must also

deliver policy recommendations to the Legislature.

In consultation with PROs and DROs, Ecology and the Department of Revenue must study the impacts of producer and distributor requirements on the litter rates of covered PPP and beverage containers, and possible improvements to the structure of the litter tax. Ecology, in consultation with the Department of Revenue, must provide recommendations to the Legislature on the applicability of the litter tax to covered PPP and beverage containers and improvements to the litter tax structure.

A severability clause is included.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill contains multiple effective dates. Please refer to the bill.