

# HOUSE BILL REPORT

## HB 1131

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**As Reported by House Committee On:**  
Environment & Energy

**Title:** An act relating to improving Washington's solid waste management outcomes.

**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 History:**

**Committee Activity:**

Environment & Energy: 1/17/23, 2/2/23 [DPS].

**Brief Summary of Substitute 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 subject 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 and the establishment of a deposit return system.

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**HOUSE COMMITTEE ON ENVIRONMENT & ENERGY**

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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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Lekanoff, Ramel, Slatter and Street.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Couture and Goehner.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Fey.

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

**Background:**

Solid Waste Management in Washington.

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.

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### **Summary of Substitute 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 PRO 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 intended for long-term use associated with durable products, materials used to package federally regulated pesticide products or animal biologic products, reusable or refillable propane gas containers, paint containers, newspaper, paper used for building construction, or certain products that are individually or categorically excluded temporarily 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 July 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 2025, 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 2025.
- Within six months after the adoption of Ecology rules, registered PROs must submit an implementation plan to Ecology for approval.
- Beginning January 1, 2028, or within six months after Ecology's approval of a submitted plan, whichever is later, PROs must begin implementing the approved plan.
- Beginning July 1, 2029, PROs must submit an annual report to Ecology.

For the first plan implementation period, Ecology may approve only a single PRO, exclusive of any producers independently fulfilling the responsibilities of a PRO. The bill provides additional implementation logistical details to PROs that register with Ecology after 2026. Ecology must review and may approve submitted 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 September 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 to 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).

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 detailed information regarding the products managed through the PRO, and other waste reduction and recycling outcomes to be achieved by the PRO. Plans submitted to Ecology have a duration of 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, unless a county adopts an ordinance to provide for alternative recycling service in those areas; 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 or a distributor responsibility organization (DRO) forms to implement a deposit return system (DRS).

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 unless the county has adopted an ordinance providing for alternative collection of covered materials.

Government entities may enter into contractual agreements with PROs for purposes of cost reimbursement. The 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 DRS for beverage containers operated by a 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.

Producer responsibility organizations 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. The 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. The UTC-regulated solid waste companies must meet curbside collection 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.

#### 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.

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 and whose PCRC obligations are managed through the PRO, and some of which are not covered PPP 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:

- plastic tubs for food products, requiring 10 percent PCRC from 2026-2030 and 30 percent PCRC beginning in 2031;
- single-use plastic cups: polypropylene cups requiring 15 percent PCRC from 2029-2030 and 25 percent PCRC beginning in 2031; and other types of single-use plastic cups requiring 20 percent PCRC from 2029-2030 and 30 percent PCRC beginning in 2031; and
- thermoform plastic containers: packaging for consumable goods requiring 10 percent PCRC from 2031-2035, and 30 percent beginning in 2036; and packaging for durable goods requiring 30 percent beginning 2036.

Plastic plant pots and trays, overseen by Ecology, will require 30 percent PCRC from 2026-2030 and 80 percent PCRC beginning 2031.

The Liquor and Cannabis Board (LCB) is directed to update its rules related to the packaging of cannabis products to reduce the use of plastic packaging in amounts commensurate with the source reduction rates proposed by a PRO, and to allow for and encourage the use of reusable containers. In consultation with Ecology, the LCB may also adopt minimum PCRC requirements for cannabis packaging of up to 25 percent through 2030 and at least 50 percent beginning in 2031.

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 petitions must be submitted through the PRO.

#### Deposit Return System.

As an alternative to satisfying its covered PPP obligations for qualifying beverage containers (QBCs), a PRO may not consider QBCs to be covered PPP upon the establishment of a DRS for QBCs by a 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 QBCs 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. Beverage containers of less than 4 ounces or more than 1 gallon are not QBCs.

By July 1, 2024, or four months after a DRO is approved by Ecology, distributors of QBCs must join a DRO. Distributors that do not join a DRO or independently fulfill a DRO's responsibilities may not sell beverages in QBCs after October 1, 2024, or 120 days after DRO approval by Ecology. The DROs must register and submit initial information to Ecology related to covered QBCs and DRO members, and must begin submitting annual reports containing additional specified information to Ecology after the DRS has been implemented. Ecology will review annual reports, makes public DRO reports, and may review the financial records of a DRO related to the accuracy of the QBC redemption rate reported to Ecology. Ecology may require a DRO to retain an independent audit firm to determine redemption rate accuracy. Distributor responsibility organization annual reports must also include verification from a third-party financial audit confirming the DRO's budget, the total value of unclaimed refunds, and a verification that funds represented by the unclaimed refunds were not distributed to members of the cooperative as a dividend.

Distributor responsibility organizations must submit annual payments to Ecology to cover implementation, administration, and enforcement costs, including rulemaking. Annual payments are based on a workload analysis prepared by Ecology, except for annual payments by independent distributors independently fulfilling a DRO's obligations, who must pay Ecology an annual payment for oversight at a rate of 10 cents per QBC. Ecology may also issue penalties of the greater of at least 15 cents per bottle or \$10,000 on any distributor that fails to participate in a DRO. Penalties are appealable to the PCHB.

By July 1, 2026, or within 180 days of Ecology's adoption of rules, a DRO must submit a plan for implementing a DRS. A DRO may require the collection of deposits for up to 60 days prior to the start of the DRS to offset refund values for QBCs. A DRO may not distribute funds from unclaimed refunds as a dividend to members of the DRO.

By January 1, 2031, a DRO must demonstrate that all QBCs are designed to be reusable or recyclable. The DRO plans must also achieve the following performance requirements:

- by 2028, a minimum of 60 percent of QBCs redeemed for reuse and recycling;
- by 2031, a minimum of 80 percent of QBCs redeemed for reuse and recycling; and
- by the end of 2031, a minimum of 1 percent of all sales of beverages in QBCs must be in reusable packaging.

The DROs that fail to achieve these performance rates must pay a penalty of 10 cents per container below the number of containers that would have satisfied the redemption performance rate. Ecology may alternatively identify priority areas for additional drop-off access to be provided in lieu of a penalty. Penalties may not be assessed for lack of

achievement of reuse performance requirements. Ecology may also impose penalties of between \$200 and \$500 per day for significant plan implementation violations or performance requirement violations, after a 60 day period to come into compliance.

The DROs must submit a plan meeting specified criteria, and Ecology must base its determination to approve a plan on those criteria. The QBCs covered by a DRO plan must carry a clear and conspicuous marking of the 10 cent refund value through the abbreviation "WARV" or an alternative abbreviation approved by Ecology. Wine containers may satisfy this labeling requirement through a quick response (QR) code. The DROs must include a method in their plans for paying an additional refund value premium for containers returned by nonprofit organizations that serve very low-income individuals who rely on regular container refunds through the DRS as a source of daily funds. Distributor responsibility organization plans must include education and outreach activities, including the development of materials and campaigns, the use of media channels, and the establishment of a process for resolving consumer concerns.

The DROs must provide a convenient bulk drop-off option for bagged QBCs at geographically dispersed locations. All drop sites must be paid for in full by a DRO. Customers may not be charged for this drop off service, and must credit back the cost of any required bag purchase. The DROs must provide at least 270 bag drop sites, including at least one in each county and each island community served by the state ferry system. Bag sites must be distributed by county proportional to the volumes of QBCs sold in counties. Within two years of DRS system implementation, a DRO must increase the number of drop sites to 280. Five years after, the DRO is required to provide 280 drop sites, and every five years after, the DRO must calculate whether beverage sale volumes have increased, and if so, must proportionally increase drop-off site locations. Drop-off locations may be located at retail establishments, but retail establishments are not required to accept returned QBCs or to allow a drop-off location. Certain large retailers must install a self-serve kiosk to print redemption vouchers, pay the value of redemption vouchers, and sell bags for redemption.

A consumer convenience advisory council of at least eight members representing specified interests must be formed by a DRO to identify potential bag drop-off locations and achieve consumer convenience. Ecology, in partnership with the DRO, must conduct an assessment of consumer convenience after five years of DRS implementation.

Drop-off bags made of plastic film must be at least 50 percent recycled content, and waste from film bags must be recycled by DROs in the best commercially available manner. The DROs are not required to accept or pay refunds for contaminated, crushed, broken, or damaged containers, or containers the DRO has reasonable grounds to believe were not purchased through the Washington DRS.

Distributors, manufacturers, or importers that fail to pay a QBC refund value to the DRO are liable for treble the collection costs incurred by a DRO for QBCs sold without the refund value.

Distributor responsibility organizations must pay the full refund value for QBCs returned to the DRO by material recovery facilities, government entities, and other processors if certain criteria are met. People and businesses are not required to use DRS infrastructure, and are not precluded from disposing of QBCs via curbside recycling collection systems.

For the first five years of DRS implementation, a DRO must remit \$15 million each year to the Department of Commerce (Commerce) for the implementation of a new Recycling Revenue Augmentation Fund (RRAF). Commerce must accept requests from local governments or curbside or drop-off recycling programs to receive RRAF funds to offset revenue losses due to the diversion of scrap material to the DRS. Requests must include third-party audited financial data demonstrating revenue losses. Commerce must evaluate these requests and determine the validity of the data, and distribute funds proportionately based on valid requests. As an alternative to participating in a DRO, a manufacturer of beverages that is also a distributor and sells or distributes no more than 10,000 beverages per year in Washington may operate an independent refund program. Ecology may approve an independent refund program if the beverages are packaged in reusable qualifying beverage containers, the manufacturer offers a refund value for containers that is greater than the amount offered by the DRO, and Ecology determines that the plan provides convenient return pathways for consumer containers. Independent refund plans must include annual reports, and authority to implement a plan can be revoked by Ecology for not providing sufficient performance or not meeting consumer convenience requirements.

#### 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 enforcing 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 extended producer responsibility 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.

### **Substitute Bill Compared to Original Bill:**

As compared to the original bill, the substitute bill:

- amends definitions, including the assignment of responsibility to persons as a producer of a product, to require that compostable products meet the requirements for products labeled as compostable under existing state law, specifying that covered products are limited to products that are sold to consumers for personal and noncommercial use;
- exempts additional products from producer responsibility organization (PRO) participation requirements, including: (1) liquified petroleum gas containers designed to be refilled and reused; (2) packaging materials in direct contact with regulated animal biologics including vaccines and diagnostic kits; (3) packaging related to containers of architectural paint collected by a Washington paint stewardship program; and (4) newspapers and paper designed for building construction;
- allows activities to eliminate plastic packaging to result in the replacement of a plastic component with a nonplastic component;
- requires the Department of Ecology (Ecology) to accept only one registered PRO for the term of the initial PRO plan period, except for any producers that choose to register individually and implement a single-producer plan;
- requires PROs to submit a coordination plan if multiple PROs are registered with Ecology;
- extends the duration of the initial plan implementation period from three years to five years;
- delays by six months or one year most deadlines for the initiation of PRO responsibilities, including requirements to register with Ecology, submit a plan to Ecology, begin implementing the plan, and begin submitting annual reports to Ecology;
- clarifies that any rules adopted by Ecology that require covered product collection services from public places or official gathering apply only at locations where a local government provides solid waste services, and may not include retail establishments, and requires public place recycling needs to be included in a needs assessment prior to the adoption of Ecology's rules;
- references specific solid waste and recycling studies carried out under Ecology that must be included in the performance rates study used to inform the performance rates

- proposed in a PRO's plan;
- eliminates certain elements of the stakeholder consultation process that PROs must carry out prior to the submission of plans and plan updates to Ecology, including eliminating the requirement to hold quarterly public meetings;
  - eliminates the process for requiring a prudency review by the Utilities and Transportation Commission (UTC) of reimbursement rates paid to government entities;
  - clarifies that individual producers are not required to redesign covered products to reduce waste or be recyclable, reusable or compostable, and that individual products are not required to be designed to be reusable, recyclable, or compostable;
  - requires the process to resolve disputes between a PRO and government entities related to determining and paying reasonable government costs to specifically be a third-party process, and eliminates the advisory council's review of this process;
  - requires PRO plans to include a plan for coordinating with any distributor responsibility organizations (DROs) formed, in addition to other PROs;
  - eliminates specifics regarding how recycling performance rates for specific materials must be calculated, and instead requires Ecology to adopt rules for the measurement of performance rates for material categories;
  - requires de minimis levels above which producers may be assessed fees by a PRO to be determined based on weight of products sold into Washington;
  - specifies that PRO fees must be set so as to seek to avoid any material category subsidizing another category of material;
  - adds home and industrial composting to the designs that could be encouraged through a PRO's use of eco-modulation factors in establishing producer fees;
  - authorizes counties to adopt ordinances to provide for the collection of covered products in areas regulated by the UTC through alternatives to curbside recycling collection, rather than through curbside recycling collection funded by a PRO;
  - narrows the standards that a PRO may establish for solid waste collection companies with a UTC certificate to curbside collection service standards;
  - eliminates provisions applicable to services standards between a PRO and government entities and other service providers, including the application of labor standards, the provision of fair opportunities for specified demographic groups, and competitive procurement practices for services other than curbside collection service providers;
  - requires a PRO's investments in infrastructure to prioritize investment in preexisting infrastructure in Washington;
  - eliminates requirements that annual reports by PROs assess net greenhouse gas emissions associated with program operations;
  - specifies that local government representation on the advisory council must include two representatives of counties and two of cities, of which one each must be representatives of rural communities and one of urban communities;
  - provides that a PRO may only impose a penalty on a producer after providing a producer 60 days after a notice of violation to come into compliance;
  - directs penalty collections to the Recycling Enhancement Account used for grants to

- local governments for solid waste activities, rather than to the responsible packaging management account;
- specifies that requirements related to the labeling of the recyclability of products apply to products subject to postconsumer recycled content requirements (PCRC) and qualifying beverage containers under a deposit return system (DRS), in addition to covered products under a PRO;
  - authorizes Ecology to use the regional or multistate clearinghouse for purposes of facilitating PCRC requirements, and to require third-party e-commerce sellers to register and use the clearinghouse, in addition to producers;
  - expands the eligibility for the process to petition Ecology for a temporary exclusion from PRO participation requirements to apply to any products that are subject to requirements under federal laws that make inclusion in the PRO infeasible or inadvisable;
  - authorizes Ecology to exempt categories or subcategories of products from PRO requirements under the petition process, in addition to exempting individual products under the petition process;
  - amends definitions, including the assignment of responsibility to persons as a producer of a product, and limiting plastic beverage containers subject to minimum PCRC requirements to those solely made of plastic material;
  - excludes liners, corks, closures, labels, and other items added to plastic bottle containers other than a cap or lid from the minimum PCRC requirements applicable to plastic beverage containers;
  - specifies that producers subject to minimum PCRC requirements managed through a PRO must continue to register and report directly to Ecology regarding PCRC content until a PRO registers with Ecology;
  - restores the process for the temporary exclusion from PCRC requirements applicable to products whose PCRC requirements are directly overseen by Ecology;
  - provides for producers of PCRC products managed through a PRO to obtain certificates of compliance for PCRC content in a manner similar to that allowed for producers whose PCRC requirements are managed directly by Ecology;
  - specifies that PCRC requirements for pesticide products apply only to pesticide products that are household cleaning products or personal care products;
  - eliminates PCRC requirements for cannabis-based products;
  - directs the Liquor and Cannabis Board to update cannabis packaging rules to reduce plastic packaging in an amount commensurate with a PRO's source reduction rate, to allow for and encourage the reuse of cannabis containers, and authorizes the Liquor and Cannabis Board to adopt PCRC rules for cannabis packaging in consultation with Ecology;
  - eliminates PCRC requirements for collection bins used for solid waste services;
  - requires plastic trash bags producer certificates of PCRC compliance to be conducted by a third-party independent and accredited certification entity;
  - eliminates authority for a PRO to establish minimum PCRC requirements for plastic products that are additional to statutory PCRC requirements;
  - adds an intent section to the DRS portion of the bill;

- requires producers of qualifying beverage containers to satisfy PCRC through limited participation in a PRO, rather than through a DRO;
- clarifies that if a DRS is established, qualifying beverage containers may not be considered covered products that require participation in a PRO;
- excludes closures and labels for qualifying beverage containers from the scope of covered products under PRO requirements;
- clarifies that if a distributor of beverage containers opts to independently carry out the responsibilities of a DRO, it must fulfill all duties and requirements that apply to the DRO, including providing a convenient bulk bag drop-off system, providing the same number, geographic distribution, and drop-off locations that DRO must provide, and meeting performance targets;
- specifies that distributors that do not join a DRO or independently fulfill a DRO's responsibilities may not sell beverages in qualifying beverage containers 120 days after a DRO is approved by Ecology;
- eliminates restrictions on who may participate on the governing board of a DRO;
- eliminates requirements that a DRO report separately to Ecology as part of its registration on the number of qualifying beverage containers sold in Washington that are reusable or compostable;
- requires DRO annual payments of Ecology's oversight costs by June 30 of each year, rather than by December 31;
- establishes an annual payment rate to Ecology for Ecology's oversight costs of 10 cents per beverage container for any independent DRS programs prior to the establishment of a DRO;
- requires a DRS to be implemented within one year of Ecology's adoption of rules pertaining to DRSs, rather than two years after registration with Ecology;
- eliminates the DRO's obligations to pay for updated performance rates studies undertaken by Ecology;
- eliminates the DRO's obligations to pay for the PRO's advisory council, and eliminates the PRO advisory council's oversight of DRO operations;
- establishes a consumer convenience advisory council comprised of specified membership, and with responsibility for working with the DRO to identify potential bag drop-off locations;
- eliminates the prohibition on the use of unclaimed deposits and commodity sale revenues for the payment of penalties, litigation, lobbying, or political advertisements;
- specifies that a DRO may not distribute funds from unclaimed refunds to members of the DRO;
- eliminates the requirement that Ecology make DRO plans and annual reports subject to public comment for 30 days prior to Ecology's approval decision;
- eliminates the authority of Ecology to amend the contents of a DRO plan in the event that a DRO fails to submit a sufficient plan after a previous Ecology disapproval of a DRO plan;
- authorizes Ecology to review a DRO's records to assess records specifically related to the accuracy of the redemption rate reported by the DRO;



- authorizes Ecology to require a DRO to identify priority areas for drop-off access to be provided in the event that a DRO fails to meet minimum redemption performance rates and is made to pay a penalty to Ecology;
- requires a DRO to add at least 10 additional drop-off locations within two years of the initiation of DRS operations, and to increase the number of beverage container drop-off sites from 280 based on a capacity formula tied to the volume of beverage sales in Washington that is recalculated every five years;
- requires local governments to coordinate with DROs to identify opportunities for the siting of collection infrastructure, including on city and county properties where appropriate, to ensure convenient statewide access of drop-off locations;
- allows for a DRO to establish an alternative access drop-off plan for any counties that do not reach a proportional level of sited drop sites;
- requires retailers over 5,000 square feet with sales of qualifying beverage units over 100,000 annually to install self-serve kiosks to facilitate the printing of redemption vouchers, pay redemption voucher values, and sell bags for redemption at the DRO-established price;
- requires a DRO to establish a geographically distributed network of processing facilities across Washington to facilitate bagged container returns by nonprofit organizations;
- amends the standards by which a DRO is not required to pay the redemption value for a returned bottle to allow for DRO nonpayment for any beverage container that the DRO has reasonable grounds to believe were not purchased in Washington or for which a refund has already been provided, rather than requiring evidence of such factors;
- requires a consumer convenience assessment to be carried out by Ecology in partnership with the DRO to assess customer convenience provided by the program;
- eliminates stakeholder consultation requirements applicable to DRO planning and operations;
- amends the standards for the payment of beverage container refund value for qualifying beverage containers returned to the DRO by material recovery facilities, governmental entities, and other processing facilities;
- eliminates human health and environmental protection standards that apply to facilities managing qualifying beverage containers;
- eliminates requirements that the DRO include certain tracking and reporting measures related to material recovery facilities and other infrastructure used by the DRS;
- amends and limits the contents of the plans and annual reports that a DRO must submit to Ecology for approval prior to the establishment of a DRS;
- amends the minimum and maximum volumes of qualifying beverage containers that must be managed through the DRS to those containers of less than 1 gallon and greater than 4 ounces;
- restricts Ecology, and independent audits that Ecology may require a DRO to carry out, from reviewing the financial details of a DRO;
- changes provisions related to Ecology enforcement of program requirements, including authorizing Ecology to impose a penalty of 15 cents per qualifying

- beverage container of any distributor that fails to participate in a DRO, and eliminating provisions related to Ecology issuance of orders and other civil penalty authorities;
- lowers the minimum reusable packaging performance rate that a DRO must achieve to 1 percent of all qualifying beverage containers by December 31, 2031, and eliminates the authority for Ecology to impose penalties for the failure to achieve reuse performance rates;
  - eliminates restrictions on the use of alternative recycling technologies by a DRO;
  - eliminates contingency plan submission requirements for DROs;
  - authorizes manufacturer distributors that produce a de minimis quantity of beverages to operate an independent refund program that meets an alternative set of requirements, including a refund value of more than 10 cents, the use of beverages that are packaged in reusable containers, and convenient consumer return pathways, rather than requiring such manufacturer distributors to participate in a DRO or independently fulfill a DRO's responsibilities;
  - specifies that if a DRO ceases to implement a DRS, qualifying beverage containers revert to being covered products subject to PRO participation requirements;
  - requires a DRO to remit \$15 million by December 31 of each year for the first five years of a DRS to a Recycling Revenue Augmentation Fund (RRAF);
  - makes Commerce responsible for the implementation of the RRAF to provide funds to offset revenue losses to local governments and operators of drop-off recycling programs;
  - creates new accounts related to the RRAF, Commerce's RRAF oversight, and Ecology's DRO oversight;
  - authorizes beverage containers for wine to satisfy the requirement to display the refund value of the container through the use of a quick response code;
  - requires DROs to describe, in their plans, how they will interact with PROs;
  - clarifies that the establishment of a DRS does not obligate any persons or business to use the DRS, and does not preclude the recycling of qualifying beverage containers via curbside recycling collection systems;
  - adds a statement to the intent section noting the continuance of certain elements of the state's system of solid waste planning and oversight; and
  - eliminates the statement in the intent section stating a policy to achieve an overall 90 percent recycling and reuse rate by 2035.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains multiple effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:**

(In support) This bill is a priority for environmental organizations and local governments. A comprehensive solution is needed in order to improve state recycling systems. Extended producer responsibility organizations (PROs) for recycling work well in other countries and achieve higher recycling rates. Other states have recently adopted laws similar to this proposal, and this is not a new concept in front of the Legislature. Utility ratepayers are not able to affect the packaging decisions made by product manufacturers that complicate the management of the waste stream and hamper recycling rates. The recycling rates achieved under the existing solid waste management laws have stagnated. Recent studies show that Washington is not in the top 10 of recycling performance among states. Extended PROs pair well with deposit return systems (DRS). Extended producer responsibility makes producers pay for the packaging products they create, based on how hard they are to manage at the end of their useful life. Extended PROs will decrease solid waste management financial burdens for local governments. Plastic waste is contaminating the environment, and in particular single-use plastic waste on beaches and in marine ecosystems. Consumers are confused over which products are recyclable, and rules for recycling vary across cities and counties. Establishing statewide consistency in the collection of products will help the public increase overall recycling rates. The bill should encourage compostable products, and particularly products that are capable of composting in nonindustrial composting facilities. Producing plastic products with recycled content reduces greenhouse gas emissions. Bottle deposit systems achieve high recycling rates by incentivizing consumers to return their bottles. Bottle deposit programs don't require any public funds to achieve high recycling rates. Bottle deposit programs should only be considered within a context in which an extended PRO is also established. Changes to the original conception of the bottle deposit program included in the bill will be needed in order for beverage producers to support the program.

(Opposed) The timeline for the implementation of the program is too fast. The performance targets and sequencing of events laid out in the bill will cause logistical challenges. There should be a small business exemption for small breweries. Additional exemptions and off-ramps need to be established for products that might have conflicting federal requirements, including pesticides, drugs, and veterinary products. Products with high existing recycling rates should not be required to participate in the system. A source reduction requirement would allow the Department of Ecology (Ecology) to ban materials instead of increasing the recycling of those materials. The bill should focus on landfill diversion, rather than a specific source reduction rate from eliminating plastic. The bill is too complex, and contains too much bureaucracy. The process for getting public input and consulting with the advisory council is onerous and will make it challenging for producers to implement the program. The bill will hurt the existing recycling system. Requiring curbside recycling collection statewide ignores Washington's geography and density, and will require urban customers to subsidize inefficient rural collection. Establishing a DRS will remove valuable materials from the existing recycling stream. Restaurants do not have the space to manage beverage containers on premises. Extended PROs are producer-funded, but will increase costs of goods to consumers. The bill should focus on improving markets for recycled material commodities, which then wouldn't need subsidies to improve recycling

rates. Producers should not have the power to manage the state's recycling system. The bill's provisions related to labeling of the recyclability of products will help reduce consumer confusion. The ambiguity in who qualifies as a producer responsible for funding the PRO needs to be resolved. Retail establishments should not have responsibility as producers. The bill needs to be designed to ensure that paper products are not cross-subsidizing the recycling costs for plastics. The program should be limited to residential collection of recycling only. Wine bottles should be allowed to be labeled with a quick response code. The approval process for alternative recycling technologies is too burdensome.

(Other) Oregon's beverage recycling system achieves an 80 to 90 percent recycling rate, as compared to less than 50 percent in Washington. The hope is to develop a proposal for a bottle deposit program that will take the best of Oregon's system, and apply additional consumer convenience and transparency in outcomes. A DRS will improve significantly on stagnant recycling rates. The public supports bottle deposit programs. Beverage producers support efficient and accountable recycling and PROs. The current proposal, including the DRS provisions, contains too much bureaucracy, reporting, audits, and processes that will add costs. The regulatory barriers in the bill will suppress innovation and prevent new recycling techniques. The extended PRO should start with an initial PRO prior to allowing multiple programs. Paint cans are managed through Washington's Paint Stewardship Program, and should be exempt from this program. Ecology supports the policy proposals but the funds to implement the program are not in the Governor's budget. This bill contains the top three recommendations from a recent policy report to the Legislature focused on how to reduce plastic waste and improve packaging recycling. Many counties support many components of the extended producer responsibility proposal, but are concerned about certain negative impacts on existing operations, including the removal of valuable commodity materials from the current recycling system. The 25 percent reuse and refill provisions for the beverage container DRS are unrealistic. Oversight of the distributor responsibility organization (DRO) should not be more stringent than oversight of the PRO. The bill should clarify how the DRO and PRO will coordinate together. Existing federal requirements should be considered when deciding which products should be covered by recycling and program participation requirements. The process for producers of animal drugs to petition for an individualized exclusion from program participation requirements will be too burdensome and subjective. Retail establishments should not be required to serve as take-back locations or have other obligations under the program. The bill is too big and complicated, and should instead ban problematic plastics.

**Persons Testifying:** (In support) Representative Liz Berry, prime sponsor; Kate Bailey; Ann Murphy, League of Women Voters of Washington; Chris Averyt, City of Spokane; Scott Hazlegrove, Washington Beer and Wine Distributors Association; Ezra Eickmeyer; Clifford Traisman, Washington Conservation Action; Carl Schroeder, Association of Washington Cities; Lisa Herbold, City of Seattle; Melissa Stuart, City of Redmond; Pam Clough, Environment Washington; Manya Gupta, Juanita High School; Giovanni Severino, Latino Community Fund; Preston Peck, City of Tacoma; Pat McLaughlin, King County;

Nora Nickum, Seattle Aquarium; Blair Englebrecht, Puget Soundkeeper Alliance; Charlie Schneider and Dax Tate, Washington Public Interest Research Group Students; Jessica Day; and Heather Trim, Zero Waste Washington.

(Opposed) Andrew Hackman, American Institute for Packaging and the Environment; Christopher Reigelsperger, Waste Management; Sam Schlaich, Flexible Packaging Association; Samantha Louderback, Washington Hospitality Association; Carlos Gutierrez, Consumer Healthcare Products Association; Katie Beeson, Washington Food Industry Association; Candace Joy, Washington State Veterinary Medical Association; Steve Wulf, Sunshine Disposal; Rebecca Francik, Basin Disposal; Rodd Pemble, Sanitary Service Company; Ron Phillips, Animal Health Institute; Mark Gingrich, Waste Connections; Craig Smith, Food Northwest; Carol Patterson, Foodservice Packaging Institute; Jay O'Neal, Republic Services; Darbi Gottlieb, AdvaMed; Peter Godlewski, Association of Washington Business; Erin Hall, American Forest and Paper Association; Brandon Houskeeper, Northwest Grocery Association; Jacob Cassady, Association of Home Appliance Manufacturers; Rowland Thompson, The Wine Institute; and Tim Shestek, American Chemistry Council.

(Other) Eric Chambers, Oregon Beverage Recycling Cooperative; John Worthington; Heidi McAuliffe, American Coatings Association; Daniel Groce, Novelis; Laurie Davies, Department of Ecology; Brad Boswell, Washington Beverage Association; Dylan de Thomas, The Recycling Partnership; Mike Smaha, Can Manufacturers Institute; Brendan Flanagan, Consumer Brands Association; Travis Dutton, Washington State Association of Counties and Washington Association of County Solid Waste Managers; Marian Dacca, Glass Packaging Institute; Todd Myers, Washington Policy Center; James Toner, International Bottled Water Association; Rowland Thompson, Allied Daily Newspapers of Washington; Mark Johnson, Washington Retail Association; Josh McDonald, Washington Wine Institute; Daniel Olson, Washington Brewers Guild; and Charles Feick, Plastic Industry Environmental Corporate Effort.

**Persons Signed In To Testify But Not Testifying:** Thessalonika Benny; and Vicki Christophersen, Washington Refuse and Recycling Association.