
Environment & Energy Committee

HB 2144

Brief Description: Providing for a deposit return program for qualifying beverage containers to be implemented by a distributor responsibility organization.

Sponsors: Representatives Stonier, Berry, Taylor, Reed, Ramel, Peterson, Callan, Macri, Street, Gregerson, Berg, Fosse, Doglio, Pollet, Kloba and Davis.

Brief Summary of Bill
<ul style="list-style-type: none">• Authorizes distributors of beverages in qualifying beverage containers (QBCs) to operate a deposit return system that establishes a 10 cent refund value for QBCs.

Hearing Date: 1/9/24

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. Under state laws addressing the local planning and management of solid waste, a waste management hierarchy is established for the collection, handling, and management of solid waste and

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prioritizes, in descending order: (1) waste reduction; (2) recycling, with source separation of recyclable materials as the preferred method; (3) energy recovery, incineration, or landfill of separated waste; and (4) energy recovery, incineration, or landfill of mixed municipal solid wastes.

The Utilities and Transportation Commission (UTC) regulates private service providers that transport solid waste, garbage, and recyclables from residential sites. The certificate to transport garbage and recyclables sets the geographic areas in which the service provider is authorized to collect waste. Cities and towns have the authority to provide their own solid waste collection services or to contract for solid waste collection services, including collection of source-separated recyclable materials. Counties may contract for the collection of source-separated recyclable materials in unincorporated areas of the county. Solid waste collection services provided or contracted by cities and towns or contracted by counties 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 extended producer responsibility or product stewardship (EPR) programs for the management of six types of products: (1) electronic products; (2) light bulbs that contain mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; (5) paint; and (6) batteries.

In general, the state's EPR 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 EPR 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.

In December 2023 Ecology submitted a report, mandated by a 2023 Operating Budget proviso, related to consumer packaging and paper materials to the Legislature from a contracted consultant. The report recommends the highest achievable recycling, reuse, and source reduction performance rates for Washington under four policy scenarios involving a combination of policies, including scenarios that include a deposit return system for beverage containers, an EPR program for packaging and paper products, the establishment of new postconsumer recycling rate targets for plastic products, and prohibitions on the use of false recyclability claims on product labels. The December 2023 report also reported the surveyed input of Washington residents on the state's recycling system.

Minimum Recycled Content Requirements.

In 2021 the Legislature established minimum recycled content requirements applicable to three categories of plastic products or products in plastic containers: trash bags; household and personal care product containers; and plastic beverage containers. 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. 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; and
- wine in 187 milliliter plastic beverage containers and dairy milk, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2036.

Litter and Business and Occupation Tax.

The Waste Reduction, Recycling, and Litter Control Act (WRRLCA), 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 WRRLCA include: litter collection efforts by state agencies including Ecology; and state assistance of local government waste reduction, composting, and recycling programs.

Washington imposes a Business and Occupation tax (B&O tax) on the gross receipts of business activities conducted within the state. Business and Occupation tax revenues are deposited into the State General Fund. There are several categories of B&O tax rates that apply to businesses engaged in different activities.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference.

Other.

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:

Distributor Responsibility Organization Formation.

Distributors representing the majority of beverages in qualifying beverage containers (QBCs) sold in or into Washington must form a distributor responsibility organization (DRO) to operate a deposit return system. Qualifying beverage containers are separate, sealed glass, metal, or plastic bottles or cans with a volume of more than four ounces and one gallon or less, and do not include cartons, foil pouches, drink boxes, metal containers that require a tool to be opened, dairy milk, or infant formula.

To be approved as a DRO, the distributors must register with the Department of Ecology (Ecology) and demonstrate that their membership represents the majority of beverages in QBCs sold or made available in Washington. Ecology may only approve of a DRO representing the majority of QBCs sold in Washington during the prior year, except that Ecology may also approve the registration of an individual distributor that independently fulfills all of the obligations of a DRO (independent DRO). The requirements to implement a deposit return system do not apply until a DRO other than an independent DRO registers and has a plan

approved by Ecology to implement the deposit return system.

By October 1, 2025, or within 120 days of Ecology approving a DRO, whichever is later, each distributor of QBCs must join a DRO or register with Ecology as an independent DRO to carry out all duties and requirements applicable to DROs. Distributors that do not join a DRO or register as an independent DRO may not sell or supply beverages in QBCs in Washington.

Ecology must implement, administer, and enforce DRO requirements, and may adopt rules.

Distributor Responsibility Organization Plans, Targets, and Reporting.

Beginning January 1, 2027, or within 180 days of Ecology adopting rules, a DRO with an approved registration must submit a plan to Ecology. Ecology must evaluate the plan and determine whether to approve it within 60 days. Ecology must approve the plan if it substantially meets DRO requirements. Processes for resubmission are provided in the event of Ecology disapproval of a plan. Upon receipt of Ecology approval, a DRO must implement a deposit return system for QBCs by July 1, 2028, or within one year of Ecology's adoption of rules or approval of the DRO plan, whichever is later.

The DRO must carry out specified education and outreach activities to support the achievement of redemption rate performance requirements.

The DRO must submit updated plans to Ecology for review in the fifth and 10th year of DRO program operations, taking into account the recommendations of a required consumer convenience assessment carried out in years four and nine of program implementation. Ecology must review updated plans, and if it determines the plan to be insufficient to meet redemption rate performance targets, Ecology must require the DRO to resubmit the plan within 60 days. If the DRO does not submit a sufficient plan within 60 days, Ecology must notify the appropriate committees of the Legislature.

A DRO must calculate a reuse sales rate and a redemption rate for QBCs and annually provide verification to Ecology. A deposit return system plan submitted by a DRO must achieve performance targets of:

- 60 percent of QBCs redeemed for reuse or recycling beginning in 2029;
- 80 percent of QBCs redeemed for reuse or recycling beginning in 2032; and
- by December 31, 2032, sales of beverages in reusable packaging must reach 1 percent of QBCs.

The DRO must submit an annual report to Ecology for the preceding calendar year of program implementation. The annual report must include specified information, such as the number of QBCs supplied into Washington in aggregate and by material categories and the number of QBC redeemed. The DRO may rely on member reporting for all reporting requirements. The DRO's annual report must provide verification from a third-party financial auditing firm confirming the DRO's total budget and cost of implementing its plan, the total value of unclaimed refunds, and

verification that funds represented by unclaimed refunds were not distributed to members of the cooperative as a dividend or form of profit or used for legislative or political advocacy efforts.

Within 120 days of receipt of an annual report, Ecology may review a DRO's record related specifically to QBC redemption rate accuracy. Review of the financial details of a DRO are specifically excluded from this review. If Ecology determines that an audit is necessary to verify the redemption rate, Ecology shall require the DRO to retain an independent audit firm.

Until a DRO begins to submit annual reports, it must submit a list of member distributors and their brands, and the total number of QBCs by DRO members sold in Washington during the previous calendar year.

Refund Value and Labeling.

A DRO implementing a deposit return system must provide a 10 cent refund value for QBCs presented for a refund. Qualifying beverage containers must carry a 10 cent refund value, be registered annually with the DRO by the producer or distributor, and be sold by a distributor, importer, or producer that is a DRO member. Qualifying beverage containers must also carry a clear and conspicuous marking indicating the refund value of the container, which may be satisfied by an abbreviation of "WARV," or another standard abbreviation approved by Ecology.

A DRO registered with Ecology may require deposits to be collected to offset the refund value up to 60 days prior to the start of the deposit return system.

A DRO may not distribute funds from unclaimed refunds to distributor members as a dividend or similar form of profit. A DRO may not use unclaimed refunds for legislative or political advocacy efforts.

Collection of Qualifying Beverage Containers.

The DRO must provide convenient bulk drop-off options for bagged qualifying QBCs. Locations for bulk drop-off must be located through a network of geographically dispersed locations that sell QBCs, are close to locations that sell QBCs, are located at publicly owned facilities, or are otherwise convenient for customers. The DRO may not charge customers for the use of this drop-off service, and must credit the cost of any required bag purchase back to the customer when the bag is returned and processed.

The DRO must provide a sufficient number and distribution of drop-off facilities to achieve redemption rate performance requirements. The DRO's plan must analyze the needed number of drop-off facilities, and must consider specified factors in making siting decisions.

Drop-off locations may be located at publicly owned facilities, sellers of QBCs to customers, or other consumer-convenient locations. Sellers of QBCs are not obligated to accept returned

QBCs or allow a drop-off location to be sited at the QBC seller. The DRO may provide alternative access plans in areas where beverage sales volumes necessitate drop-off capacity but a drop-off location cannot be secured.

All sellers of QBCs to customers over 5,000 square feet with at least 100,000 QBC unit sales annually must install a self-serve kiosk to facilitate the printing of redemption vouchers, pay the value of redemption values, and sell bags for the bulk redemption program at a DRO-established price. The DRO must reimburse sellers of QBCs for the value of redeemed vouchers. The DRO may use commercially viable methods of counting returned containers. Distributor responsibility organizations must have a customer service system, which serves as the sole remedy to resolve complaints and discrepancies.

The DRO must pay the full refund value for QBCs returned to the DRO by material recovery facilities, government entities, and other processors only if:

- the QBCs have been collected and separated in accordance with DRO standards and are delivered directly to a DRO facility. The DRO's plan must include a description of the standards for how QBCs must be collected, separated, and delivered to a DRO;
- the government entity or facility may only handle or process materials from Washington, or provide third-party auditing and verification to confirm containers returned were from Washington; and
- the containers are separated by material type, not contaminated with other materials or substances, and are not crushed, broken, or otherwise substantially manipulated into a shape other than the shape at the time of purchase.

The DRO is not required to accept or pay refunds for contaminated, crushed, broken, or damaged containers, and for containers the DRO has reasonable grounds to believe were not purchased through the state's deposit return system or for which a refund has already been issued.

The DRO's plan must include a method to accept direct, sorted returns in commercial quantities for an additional refund value premium if containers are returned by 501(c)(3) nonprofit organizations approved by the DRO that serve very low-income individuals who rely on regular container refunds as a source of daily funds. The DRO may approve or deny partnerships at its sole discretion.

The number of drop-off locations required to be provided by a DRO to achieve performance rate targets for 2032 must be used to calculate a drop-off capacity formula of sites relative to anticipated QBC sales. Five years after a DRO begins operating a deposit return system, and every five years after, a DRO must calculate an updated number of drop-off locations, and must make the new drop-off locations within three years after providing Ecology with a list of proposed new locations.

The DRO must establish a consumer convenience advisory council (advisory council) by January 1, 2026, or 60 days after a DRO is approved by Ecology. The advisory council includes specified membership, including retail grocers and local governments. The advisory council

must:

- work with the DRO to identify potential bag drop-off locations and achieve the required consumer convenience;
- provide input on new drop-off site locations; and
- consult in the selection of a third party firm to carry out a consumer convenience assessment. The consumer convenience assessment must be carried out in consultation with Ecology in the fourth and ninth year of DRO program implementation. The DRO must contract with and pay for the consultant to identify any barriers to achieving required redemption performance rates. If the assessment determines that the required number of drop-off locations has not been reached, or that redemption rates are significantly below performance targets, the consultant must make recommendations to Ecology, the DRO, and the advisory council.

Fees, Payments, and Penalties.

Ecology must complete an annual workload analysis that identifies Ecology's anticipated administration, implementation, and enforcement costs for the upcoming fiscal year, and which serves as the basis for a DRO's annual fee payment. Distributor responsibility organizations must submit an annual payment to Ecology by June 30 of the fiscal year of approval of DRO registration. In lieu of an annual fee payment required of the DRO, independent DROs must pay a registration fee to Ecology equal to 10 cents per QBC until the DRO begins operating a deposit return system.

For the first five years of deposit return system operation, a DRO must remit \$15 million by December 31 of each year to the Department of Commerce for a recycling revenue augmentation funding program. If the first year of DRO system operation begins after January 1, the payment amount must be prorated. The Department of Commerce must use these funds to accept and make payments for annual requests from local governments or operators of curbside or drop-off recycling programs to offset revenue losses from scrap material being diverted to the deposit return system. Requests must include third-party audited financial data demonstrating revenue losses from scrap material diversion, minus any decreased operating costs for the requester and any new revenues provided through other producer responsibility programs created in 2024 or later by the Legislature. Requests must include the average total tons of glass, plastic, and metal for the three years preceding the operation of the deposit return system, compared to the total tons for the year for which payments are requested. Any unobligated balance must be remitted to the DRO at the end of each calendar year.

After a DRO begins operating a deposit return system, and after notification of noncompliance and a 60-day cure period, Ecology must impose a civil penalty on any distributor who fails to participate in a DRO of at least 15 cents per QBC or \$10,000, whichever is greater. Distributors that incur this penalty may appeal to the Pollution Control Hearings Board.

A manufacturer, distributor, or importer that fails to pay the DRO the refund value for QBCs is liable to the DRO for three times the unpaid refund value and three times the collection costs

incurred by the DRO.

Upon notice of a significant violation by a DRO, and after a 60-day cure period, Ecology may assess a civil penalty of between \$200 and \$500 per day per violation. Ecology must make best efforts to work with the DOR to remedy issues without penalties, and make reasonable accommodations when a violation is outside the DRO's control or is not feasible to quickly remedy.

A failure to achieve redemption rate performance requirements is subject to an alternative penalty scheme. The DRO must calculate the number of containers representing the difference between the redemption rate of QBCs and the redemption rate performance requirements, and pay a penalty equal to 10 cents times the number of containers representing the difference. At Ecology's discretion, in lieu of a penalty Ecology may identify priority areas for additional drop-off access to be provided, or may reduce the amount of the penalty in conjunction with the identification of priority areas. Civil penalties may not be assessed based on reuse sales rate performance requirements.

Other.

Qualifying beverage containers, and their closures and labels, cease to be covered products in any other extended producer responsibility program upon the distributor responsibility organization formation and implementation provisions becoming law in 2024. A producer responsibility organization may not require the participation of, or impose fees on, producers or distributors of QBCs. The DRO must describe in its plan submitted to Ecology how it will coordinate with other recycling systems and processes, including producer responsibility organizations. If a DRO ceases to exist and operate a deposit return system, other than for temporary disruptions, or if the DRO and Ecology fail to reach agreement on an initial plan, the DRO system must be discontinued, and QBCs become covered products under any relevant extended producer responsibility programs.

Persons are not required to use the deposit return system infrastructure and are not precluded from disposing of or recycling QBCs through curbside recycling collection systems.

Distributor responsibility organizations that submit confidential information to Ecology related to DRO requirements may request that the information be only for the confidential use of Ecology. Ecology's director may consider this request and must grant the request that the information remain confidential if it is not detrimental to the public interest and is otherwise in accordance with Ecology's policies.

A distributor that is also a manufacturer may submit a plan to Ecology to operate a small-scale refund program for beverages in QBCs that provide return pathways and options that are convenient for consumers, and if certain other criteria are met. If approved by Ecology, the distributor manufacturer is not subject to the DRO participation requirements applicable to other distributors.

Drop-off bags used for QBCs that are made of plastic film must have a minimum postconsumer recycled content that equals that of the minimum postconsumer recycled content requirements applicable to plastic trash bags. The DRO must also be able to demonstrate that the recovered film from bags is recycled.

Taxpayers may deduct from business and occupation (B&O) taxes the amounts derived from charges for refund values of QBCs. The litter tax does not apply to refund value charges for QBCs. For both tax provisions to apply, the charge must be separately stated on a receipt, invoice, or billing document given to the QBC purchaser. A tax preference performance statement is not required to be prepared for the litter and B&O tax preferences.

Cities and counties must consider storage or drop-off containers for QBCs to be temporary mobile containers for permitting or siting procedures, regardless of whether they are affixed to a site, have electrical power, or have wheels.

In consultation with DROs, Ecology and the DOR must study the impacts of distributor requirements on the litter rates of qualifying beverage containers, and possible improvements to the structure of the litter tax. Ecology, in consultation with the DOR, must provide recommendations to the Legislature in 2030 on the applicability of the litter tax to QBCs and improvements to the litter tax structure.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on January 4, 2024.

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