

SENATE BILL REPORT

SB 5154

As of January 18, 2023

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

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

Sponsors: Senators Rolfes, Nguyen, Cleveland, Frame, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nobles, Pedersen, Salomon, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/17/23, 1/18/23.

Brief Summary of Bill

- Requires producers of consumer packaging and paper products to join or register with the Department of Ecology as a producer responsibility organization, subject to funding, planning, and performance requirements, to increase the recycling and reuse rates of these products.
- Establishes minimum postconsumer recycled content requirements for thermoform plastic containers, plastic tubs, single-use plastic cups, roll carts, cannabis and cannabis-infused products, pesticide products, and plant pots and trays.
- Authorizes the establishment and operation of a deposit return system for qualifying beverage containers by distributor responsibility organizations.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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Background: Solid Waste Management in Washington. Under the state's solid waste management laws, local governments are the primary government entity responsible for

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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.

State law establishes that the following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

- waste reduction;
- recycling, with source separation of recyclable materials the preferred method;
- energy recovery, incineration, or landfill of separate waste; and
- energy recovery, incineration, or landfill of mixed municipal solid wastes.

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:

- electronic products (2006);
- light bulbs that contain mercury—such as compact fluorescent lights (2010);
- photovoltaic solar panels (2017);
- pharmaceuticals (2018); and
- paint (2019).

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 into the state, as well as its management and disposal. The report was required to assess specified aspects of plastic packaging markets and processing infrastructure, and to include recommendations to meet the following goals of reducing plastic packaging through industry lead or product

stewardship:

- achieve 100 percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;
- achieve at least 20 percent postconsumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

In December 2020, Ecology submitted a report to the Legislature that included ten policy recommendations related to the management of packaging materials.

As part of the 2022 supplemental operating budget, Ecology was directed to conduct a study to:

- assess the amount and types of consumer packaging and paper products sold or supplied into the state and recycling rates achieved for these materials through existing recycling programs and activities in the state; and
- in accordance with the recommendations from the 2020 report, consider and make recommendations on legislative action to address the items included in the list of problematic and unnecessary materials identified for elimination by the United States Plastic Pact.

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 cleaning and personal care product containers, and plastic beverage containers. Unique minimum postconsumer recycled content (PCRC) rates and timelines over which the minimum recycled content rates increase apply to:

- beverages other than wine in 187 milliliter plastic beverage containers and dairy milk—beginning rate: 15 percent in 2023, increasing to 50 percent by 2031;
- wine in 187 milliliter plastic beverage containers and dairy milk—beginning rate: 15 percent, increasing to 50 percent by 2036;
- household cleaning and personal care product containers—beginning rate: 15 percent, increasing to 50 percent by 2031; and
- plastic trash bags—beginning rate 10 percent, 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 of minimum PCRC standards, including 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 \$0.20 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 PCRC standards beginning in 2022.

Litter Tax. The Waste Reduction, Recycling, and Litter Control Act (Act), established in 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.

The 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.

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 Organizations. Beginning January 15, 2024, each producer that sells or distributes a covered product in or into Washington must join a producer responsibility organization (PRO) that is registered with Ecology or register with Ecology as a PRO. A producer that has not joined a PRO may not sell or supply covered products in or into Washington.

"Covered product" means packaging and paper products sold or supplied to consumers for personal use. In addition to consumer products sold at retail establishments, packaging also includes materials supplied to consumers for the purpose of facilitating food or beverage consumption that is ordinarily discarded after a single use or short-term use. Paper products include flyers, brochures, booklets, catalogs, newspapers, magazines, copy and printing paper, but does not include bound books, archival paper, and paper products that, by any common and foreseeable use, could reasonably be anticipated to become unsafe or unsanitary to handle.

A producer is the first entity that meets the definition in a descending hierarchy from

manufacturer, retail brand owner, licensee, or importer and distributor. For remote sale products, the producer of the product is the same for purposes of other covered products. The producer of the packaging used to ship the product is the person that packages and ships the product. For applicable paper products, the producer is the publisher.

Producers do not include government agencies, municipalities, or other political subdivisions of the state, charitable and social welfare organizations, or small producers:

- that annually sell or distribute into Washington State less than one ton of covered products; and
- that have an annual global gross revenue of less than \$5 million.

"Producer responsibility organization" means a 501(c)(3) nonprofit organization and is designated by a producer or group of producers to develop and carry out activities required of producers under the program, or a producer that registers with Ecology as a PRO.

Registration by a PRO must include a list of all member producers and their brands of covered products, and member of the board of directors.

By June 30, 2024, and every June 30th thereafter, every PRO must submit an annual payment to cover the costs of the program.

Beginning July 1, 2026, or within six months of the adoption of rules implementing the program, whichever is later, every PRO must submit a plan describing how the PRO will meet the requirements of the program to Ecology for approval.

A PRO registered with Ecology as of January 15, 2026, must implement its plan by July 1, 2027.

Rates Study and Needs Assessment. To inform the implementation of the program, Ecology must conduct a performance rates study and a statewide needs assessment that must be carried out by a third-party consultant and funded by PROs.

The performance rates study must be completed by April 1, 2024, and recommend performance rates, including:

- a rate for the overall combined reuse and recycling of covered products;
- a separate specific minimum reuse rate, that must be counted within the overall combined reuse and recycling rate;
- a source reduction rate to be achieved solely by eliminating plastic components; and
- if a distributor responsibility organization has notified Ecology of its intent to implement a deposit return system at least six months prior to the date of the completion of a study, alternate rates that exclude qualifying beverage containers that are to be managed under the deposit return system.

Recommendations must consider the feasibility of achieving recommended rates based on current rates achieved in the state, rates achieved in other jurisdictions with similar

programs, and additional relevant data. The recommended performance rates must be designed to be achieved for covered products statewide by 2032.

The advisory council and any PRO must have the opportunity to review and comment on a draft study prior to its completion.

No more frequently than every five years, Ecology may update the performance rates study.

The statewide needs assessment must be completed by July 1, 2025 and:

- evaluate the capacity, costs, gaps, and needs for services and infrastructure relative to meeting performance rates, collection requirements, and other program components;
- compile information related to costs incurred by government entities for collection services, including cost factors to be considered in the development of reimbursement rates to government entities for curbside collection services;
- identify issues to be considered in the development of a service agreement template outlining terms and conditions for reimbursement;
- compile relevant information to be considered in the development of criteria by Ecology to determine whether a covered product is recyclable, reusable, or compostable;
- evaluate how the state's recycling system can be managed in a socially just manner for the purpose of informing how each PRO can support this objective as it relates to program activities;
- evaluate the extent to which covered products contribute to litter and marine debris for the purpose of informing how a PRO can support litter and marine debris prevention as it relates to program activities; and
- compile information on the presence of toxic substances in covered products and their potential impacts on reuse, recycling, and composting systems.

The final scope of the needs assessment must be determined after considering comments and recommendations from the advisory council, UTC, and from any PRO registered with Ecology by January 15, 2024.

The UTC, the advisory council, and registered PROs must have the opportunity to review and comment on the draft needs assessment prior to its completion.

The needs assessment must be informed by the findings and recommendations of the performance rates study and the performance rates submitted by PROs and approved by Ecology.

In consultation with the advisory council, UTC, registered PROs, and Ecology may update the needs assessment to inform the development of PRO plans.

The scope of a needs assessment update may include an analysis of the plastic resin market, including analyzing market conditions and opportunities in the state's recycling industry for

meeting minimum postconsumer recycled content requirements for covered products and determining data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry.

Producer Responsibility Organization Stakeholder Consultation. Registered PROs must maintain a public website informing the public of plan implementation details, including collection services and locations for each type of covered product, and a current list of all participating member producers and brands.

Prior to submitting a plan to Ecology, a PRO must directly and actively consult stakeholders to develop key plan elements. The PRO, through the consultation process, must solicit and respond to input and recommendations from the advisory council, UTC, and other stakeholders.

At a minimum, the consultation process must include:

- quarterly meetings open to the public with the advisory council throughout the plan development process to discuss and review key plan elements;
- consultation on reimbursement rates and service agreement templates for reimbursement to government entities for curbside collection and other services;
- prudence review by UTC of base cost formulas proposed to be used for calculating reimbursement rates to government entities;
- opportunities for all stakeholders and members of the public to provide comments on the plan;
- presentations for soliciting meaningful input on the plan, including workshops, surveys, webinars, and one-on-one meetings; and
- documentation of all comments received and a summary of responses provided by the PRO to be included with the submission of a plan to Ecology.

Plan Contents. All plans and plan updates must contain several elements, including the following information:

- identification of the governing board members of the PRO;
- a list and explanation of the covered products supplied or sold in or into Washington by each member producer and their brands of covered products;
- a description of the structure of fees owed by producers to be used to implement the plan;
- proposed performance rates for covered products, including a description of the basis and reasoning for the rates proposed;
- activities to be undertaken to meet performance rates, collection requirements, and other program requirements;
- how the PRO will encourage and incentivize waste prevention and reduction of consumer packaging and paper products and their associated climate impacts;
- how the PRO will encourage and incentivize the redesign of covered products to be reusable, recyclable, or compostable;
- how the PRO will fund reuse and recycling infrastructure and market development in

- the state;
- a list of covered products designated for collection statewide;
- a description of how the plan implementation will maintain responsible management practices for covered products through to final disposition;
- a description of the base cost formulas used to calculate reimbursement rates for curbside collection and other services delivered by government entities, any terms or conditions covered in service agreements with government entities for receiving reimbursements, and the process to resolve disputes between the PRO and service providers;
- a stakeholder consultation report; and
- a description of how the PRO will coordinate with other PROs to meet program requirements, if more than one PRO is registered with Ecology.

Plan Approval, Updates, and Revisions. Initial PRO plans may address no more than three calendar years, dating from the date on which the plan is due to be submitted to Ecology. Within two years of initial plan implementation, a PRO must submit an updated plan for the following five calendar years to address changes in the operations and activities of the program.

All subsequent PRO plans must address five calendar years of operation, dating from the date on which the plan is due to be submitted to Ecology and are valid for no more than five years.

If the performance rates set in a PRO plan have not been met as of the time of plan update, the PRO must arrange for an independent evaluation to be conducted of the PRO's efforts to implement the plan. The evaluation must provide information for the PRO to use to target and improve program outcomes relative to the performance rates.

The stakeholder consultation process for PRO plans is not required to be carried out for submitting a revised plan in response to an order from Ecology, or subsequent to a letter disapproving a plan.

Ecology may require a PRO to update its plan more frequently than every five years if:

- the program and activities to implement the plan fail to achieve the performance rates set in PRO plans or otherwise fail to achieve significant program requirements;
- additional PROs register with Ecology or receive approval from Ecology to begin implementing a plan; or
- there are significant changes to the regulatory or economic environment in which plan activities are being carried out.

Performance Rates. By July 1, 2024, any registered PRO must submit proposed performance rates to Ecology for covered products reported by the PRO as supplied into the state to be achieved by 2033. In proposing the rates, the PRO must consider the rates recommended by the performance rates study, and propose, at minimum:

- an overall combined reuse and recycling rate of covered products;
- a separate specific minimum reuse rate, that must also be counted within the overall combined reuse and recycling rate; and
- a source reduction rate to be achieved solely by eliminating plastic components.

If the proposed rates differ from those recommended by the performance rates study, the PRO must provide a justification for the rates proposed.

Any PRO plan must include a separate set of performance rates, taking into account the findings of the performance rates study, the statewide needs assessment, and additional relevant data. The rates submitted in a plan must be achieved by the end of the plan implementation period.

At minimum, the plan performance rates must include:

- an overall combined reuse and recycling rate of covered products;
- a separate minimum reuse rate of covered products, which is also to be counted within the overall combined reuse and recycling rate;
- a combined reuse and recycling rate for each material category of covered products reported by the PRO as supplied into the state; and
- a source reduction rate to be achieved solely by eliminating plastic components.

Proposed rates must demonstrate continuous improvement in performance rates of covered products over time.

To be considered recycled, the amount of recycled material must be measured at the following calculation point for each material category of covered products included in the plan.

For rigid plastic material other than beverage containers:

- the material is delivered to a facility for flaking, pelletization, extrusion, molding, or an approved alternative recycling process for conversion of post-use plastic polymers for use in the production of new products whether for the original or another purpose; or
- the material is compostable and is delivered to an organic materials management facility. Rigid plastic material that is compostable and managed through composting must be measured and reported separately from other rigid plastic material to be counted as recycled.

Plastic beverage containers and flexible plastic material are each separate material categories but have the same calculation point as rigid plastic material.

For paper material:

- the material is delivered to a pulping operation or other facility for use in the production of new products whether for the original or another purpose; or

- the material is compostable and is delivered to an organic materials management facility. Paper material that is compostable and managed through composting must be measured and reported separately from other paper material to be counted as recycled.

Aluminum and steel are separate product categories and are calculated at the point that the material is delivered to a metal smelter, furnace, or other facility for use in the production of new aluminum and steel products whether for the production of containers or products.

Glass is calculated at the point that the material is delivered to a glass furnace or other facility for the production of glass containers and products.

For materials not included in the listed material categories, the calculation point must be proposed and described by the PRO in its plan and annual report and is subject to approval by Ecology.

To be included in a performance rate calculation for purposes of the program, recycled materials must be transferred to a responsible end market.

For purposes of calculations of reuse and elimination, a PRO must include both the weight and number of units.

Funding. A PRO implementing a plan must fully fund all activities required under the program. A nonreimbursable point-of-sale fee may not be charged to consumers to recoup the costs of meeting producer obligations under the program.

A PRO must develop a system to collect fees from participating producers to cover the costs of plan implementation. To minimize administrative and reporting costs of producers and the PRO, the fee system must include:

- a small producer level in which no fees are charged by the PRO;
- additional charges applied specifically to producers of products with existing postconsumer recycled content requirements, in an amount roughly equivalent to cover the PRO's costs of managing the requirements for those producers; and
- an optional flat rate for producers below a certain size.

A PRO must allow producers of newspapers or magazines to satisfy their fee obligations by providing in-kind advertisement or publication supporting the PRO's education and outreach activities.

A PRO must base the system of fees upon the estimated cost of managing the material categories of covered products or a similar approach proposed by the PRO, including, but not limited to, the consideration of:

- the total annual amount of covered products sold or supplied into the state, by material category;

- the material characteristics and costs associated with management of each material category; and
- the commodity value of each material category as a recycled material.

The fee system must use eco-modulation factors to incentivize the use of packaging design attributes that reduce the environmental impacts of covered products. Examples of activities that a fee system may include to satisfy this requirement, include encouraging designs that facilitate and improve infrastructure and systems for reuse and recycling, and encouraging designs that discourage the use of problematic or difficult to recycle materials.

Convenience Standards. In every jurisdiction in which covered products are sold or supplied to consumers, a PRO must fund activities to make convenient collection services available for the full list of covered products designated for collection in the plan.

A PRO must provide curbside collection to residents in single-family and multifamily residences wherever curbside garbage collection services are provided, except for covered products designated for alternate collection.

In jurisdictions without curbside garbage collection, and in all areas for covered products designated for alternate collection, free and equitable access to permanent collection facilities must be provided that are located, at minimum, at:

- each existing solid waste transfer, processing, disposal site, or other drop-off location, or a location demonstrated to be of equal convenience; and
- additional drop-off locations or collection events in communities that are not covered by collection sites or locations.

A PRO, after soliciting input from Ecology, the relevant government entity, and the local community, must determine a reasonable number and location of additional drop-off locations and collection events held in underserved areas. A PRO must give special consideration to providing opportunities to island and geographically isolated populations.

A retail establishment may choose to serve as a drop-off location or site of a collection event, through mutual agreement with a PRO, but retail establishments are not obligated to serve as either.

For the duration of initial plan implementation, collection must be provided in the following public places:

- any existing location where government entities provide and manage recycling collection receptacles; and
- at additional locations as determined by the PRO, after considering recommendations from stakeholders and the statewide needs assessment.

In any jurisdiction where collection of source separated recyclable materials from residences is provided by a city, town, county, or UTC-regulated hauler, a PRO must meet

its curbside collection service obligation through the collection service in the jurisdiction.

A PRO must, in its plan, establish a statewide list of covered products designated for collection.

Every PRO must provide maps on its website of each location where collection is provided and the type of collection provided.

Government Entity Authority. The program does not obligate a county, city, or town that utilizes its collection service contract authority or that directly provides collection service to its residents to participate in a plan implemented by a PRO, nor does the program restrict their authority.

A city, town, county, or other government entity may enter into agreements with a PRO for the purposes of reimbursement of costs of services.

In areas regulated by UTC, curbside collection of source separated recycled materials must be provided by a company that holds an applicable certificate issued by UTC.

A city, town, or county may not enact an ordinance requiring producers to provide residential recycling services for covered products that are additional to the requirements of the program unless producers are not required to fully fund the requirements of the program.

Cost Reimbursement. A PRO with covered products designated for curbside collection under its plan must provide reimbursement to a government entity that chooses to seek reimbursement for costs incurred in delivering curbside collection services. Costs that must be reimbursed by a PRO include any administrative, public education, collection, transportation, and sorting or processing costs incurred in delivering curbside collection services. Reimbursements must be calculated using base cost formulas established in the PRO plan approved by Ecology.

Similar reimbursement provisions apply if a PRO elects to use services other than curbside collection from a government entity.

Any government entity that receives reimbursement for costs incurred in delivering curbside collection services must report or publish reimbursed costs to its residents annually and as part of each rate increase notification.

In areas where collection of source separated recyclable materials from residences is regulated by UTC, a PRO must provide reimbursement to the company granted a certificate to provide the service in accordance with the rates approved by the commission.

To be eligible for reimbursement from a PRO, UTC-regulated hauler must provide service

that:

- is offered to residents in single- and multi-family residences wherever curbside garbage collection services are offered;
- includes collection of all covered products designated for curbside collection;
- aligns with service standards established by the PRO; and
- is provided in a manner consistent with the requirements of the program.

Service Provider Agreements. Service provider agreements between PROs and government entities are limited in scope to authorizing the reimbursement of costs incurred in the collection of curbside services, and any other services included in a PRO plan that are to be carried out by a government entity.

Except for curbside collection services, a PRO that enters into contractual agreements with service providers to carry out producer responsibilities must:

- use open, competitive, and fair procurement practices; and
- provide opportunities for women-, minority-, or veteran-owned businesses; small businesses; and independent operators.

The PRO must require these contracted service providers to meet minimum operating standards, high labor standards, maintain reporting parameters for material recovery facilities and verifiable chain of custody documentation up to the point of final destination, and provide fair opportunities regardless of ethnicity, race, gender, age, disability, religion, sexual orientation, or national origin.

Infrastructure Investments. Each PRO must fund and support investments in reuse and recycling infrastructure and market development in Washington as needed to achieve program requirements or to address infrastructure gaps, including investments needed to enable reuse of covered products or the recycling of covered products not currently recycled in the residential recycling system.

Investments may include, but are not limited to installing or upgrading equipment to improve sorting of covered products or mitigating the impacts of covered products to other commodities at existing sorting and processing facilities, and capital expenditures for new technology, equipment, and facilities.

Infrastructure investments must be detailed in the PRO's annual report. If a PRO did not invest in preexisting reuse and recycling infrastructure within Washington, the annual report must include a statement of the reasons why no such investment was made.

Producer Responsibility Organization Education and Outreach. To support the achievement of performance rates and other program requirements, a PRO must develop and provide outreach and educational materials, resources, and campaigns about the program to be used by retail establishments, collectors, government entities, and nonprofit organizations.

A PRO must coordinate and fund the distribution and deployment of statewide promotional campaigns through media channels that may include print publications, radio, television, the Internet, and online streaming services.

A PRO must use consistent and easy to understand messaging and materials that are conceptually, linguistically, and culturally accurate for the communities served.

Some of the aims of education and outreach materials are to educate and engage with residents on recycling, reuse, and refill behaviors, describe where and how to recycle covered products, and reduce resident confusion regarding the recyclability of covered products.

A PRO must establish a process for answering customer questions and evaluate the effectiveness of education and outreach efforts for purposes of making progress toward performance requirements.

A PRO must coordinate with government entities that choose to participate in carrying out education and outreach activities and any other PROs to present a consistent statewide program.

Producer Responsibility Organization Reporting. Beginning July 1, 2028, each PRO must submit an annual report to Ecology for the preceding calendar year of plan implementation. Each report must include data, descriptions, and other information sufficient to allow Ecology to determine whether a PRO has fulfilled its obligations under the program for the preceding calendar year.

Each annual report must include identification of the governing board members of the PRO, the final destinations of recycled material managed by the program, an assessment of the net greenhouse gas emissions associated with program operations, and the total cost of implementing the PRO's plan, as determined by an independent financial audit.

All nonfinancial data and information that is material to Ecology's review of the PRO's compliance with the program must be audited annually by an accredited and nationally recognized independent laboratory or certification body.

Auditing and verification must include documentation of performance rate calculations, encompass management of materials from the point of collection through processing and sale of recycled materials, and determine whether all facilities involved in the management of covered products are operating in accordance with program requirements.

Truth in Labeling. Beginning January 1, 2027, a producer may not make a deceptive or misleading claim about product recyclability, such as the use of a chasing- arrows symbol, if the product is not designated for program collection.

A label is not considered a misleading or deceptive claim of recyclability if it is required by another state or federal law, part of a widely adopted and standardized third-party labeling system, or uses the chasing- arrows symbol and a slash to convey that the item is not recyclable.

Beginning July 1, 2023, a city, town, or county may not enact a truth in labeling ordinance for covered products if the product is designated for collection in a PRO plan.

Petition for Exclusion. Prior to the submission of a new or updated plan, Ecology may review and determine for the duration of the upcoming plan's period of applicability whether to temporarily exclude from the requirements of the program, packaging used to contain a product regulated as a drug, medical device, or dietary supplement by the federal Food and Drug Administration or a product that is regulated as animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin under the federal Virus-Serum-Toxin Act.

Ecology's review may be initiated by the department or a petition from a PRO. In making a determination for exclusion, Ecology must consider the technical feasibility of including the product in the program, progress made by the producer of the product in achieving the goals of the program, including packaging reduction, increased recycled content and ability of the product's packaging to be reused or recycled.

Registration Clearinghouse. Ecology is authorized to participate in the development and ongoing operation of a regional or multistate clearinghouse for the purpose of facilitating the implementation of state laws on packaging and paper products. Ecology may direct producers to register and submit any required data, annual reports, fees, and annual payments to a clearinghouse in lieu of the department.

Responsible Packaging Management Account. The Responsible Packaging Management Account is created for the use of funds by Ecology to implement, administer, and enforce the requirements of the program. All receipts received by Ecology from a PRO must be deposited in the account.

Producer Responsibility Organization Management of the Postconsumer Recycled Content. By January 1, 2024, and each January 1st thereafter, a PRO that represents producers that sell or distribute the PCRC products must register with Ecology on behalf of each producer registered with the PRO that sells or distributes PCRC products in or into Washington.

The registration information must include a list of the producers of PCRC products and the associated brand names of the PCRC products.

Each producer of a PCRC product must annually report PCRC to the PRO with which it is registered. Producer PCRC reports must include the amount in pounds of virgin plastic and the amount in pounds of PCRC by resin type used within a single PCRC product sold or

distributed in or into Washington and the total PCRC resin as a percentage of the total weight of plastic reported for a single PCRC product category.

The report must include a certificate of compliance conducted by an accredited nationally recognized, independent third party.

A PRO reporting to Ecology must pay fees to cover the cost of PCRC administration.

A PRO may petition Ecology for an exclusion or adjustment covering the upcoming calendar year to the minimum PCRC requirements on behalf of producers registered with the PRO.

A producer that is assessed a penalty for non-compliance of PCRC requirements must remit the penalty to the PRO with which it is registered. A PRO must submit aggregated penalty payments from all producers owing penalties and that are registered with the PRO.

A PRO may establish minimum PCRC requirements for new categories of plastic products for those products covered by a PRO plan. A PRO may increase the minimum PCRC requirements for plastic products subject to PCRC standards for those products covered by a PRO plan, or require that the minimum PCRC requirements be met on a faster timeline for those products.

For purposes of managing PCRC, requirements of a PRO also apply to any established distributor responsibility organization for qualifying beverage containers.

Plastic trash bags, plastic plant pots and trays, and pesticide products subject to PCRC are not considered covered products under the PRO program and register, pay fees, report, and are otherwise administered by Ecology. A producer of these products must develop a certificate of compliance stating that the product is in compliance with PCRC requirements.

PCRC for New Product Categories. A producer must meet the following annual minimum PCRC percentage on average for the total quantity of PCRC products or product containers, by weight, that are sold or distributed in or into Washington:

- for plastic tubs for food products, effective:
 1. January 1, 2026, through December 31, 2030—no less than 10 percent PCRC plastic by weight; and
 2. on and after January 1, 2031— no less than 30 percent PCRC plastic by weight;
- for polypropylene single-use plastic cups, effective:
 1. January 1, 2029, through December 31, 2030— no less than 20 percent PCRC plastic by weight; and
 2. on and after January 1, 2031—no less than 25 percent PCRC plastic by weight;
- for polyethylene terephthalate (PET) and polystyrene, and other types of single-use plastic cups, effective:
 1. January 1, 2029, through December 31, 2030—no less than 20 percent PCRC

- plastic by weight; and
- 2. on and after January 1, 2031—no less than 30 percent PCRC plastic by weight;
- for thermoform plastic containers for consumable goods, effective:
 1. January 1, 2031, through December 31, 2035—no less than 10 percent PCRC plastic by weight; and
 2. on and after January 1, 2036—no less than 30 percent PCRC plastic by weight;
- for thermoform plastic containers for durable goods, effective on and after January 1, 2036, no less than 30 percent PCRC plastic by weight;
- for plastic containers or packaging for cannabis, cannabis concentrates, useable cannabis, or cannabis-infused products, effective:
 1. January 1, 2025, through December 31, 2030—no less than 25 percent PCRC plastic by weight; and
 2. beginning January 1, 2031—no less than 50 percent PCRC plastic by weight;
- for pesticide products that are in direct contact with the regulated product, effective:
 1. January 1, 2025, through December 31, 2027—no less than 15 percent PCRC content plastic by weight;
 2. January 1, 2028, through December 31, 2030—no less than 25 percent PCRC content plastic by weight; and
 3. on and after January 1, 2031—no less than 50 percent PCRC content plastic by weight; and
- for plastic plant pots or trays, effective:
 1. January 1, 2026, through December 31, 2030—no less than 30 percent PCRC plastic by weight; and
 2. on and after January 1, 2031—no less than 80 percent PCRC plastic by weight.

Ecology must consult with the Liquor and Cannabis Board to implement and enforce PCRC for cannabis and cannabis products.

Postconsumer Recycled Content for Roll Carts. Beginning January 1, 2024, a manufacturer or person may only sell or distribute for use in Washington plastic collection bins made from at least 25 percent PCRC, including at least 10 percent derived from curbside recycling programs. A person providing solid waste collection services may distribute for use in Washington any plastic collection bins that were in use or in its inventory in Washington State prior to January 1, 2024, until the end of the bin's useful life.

A person with an existing municipal contract for plastic collection bins that was in place prior to August 1, 2023, is exempt from these requirements until the expiration or renewal date of the contract. Upon request, manufacturers of plastic collection bins, including persons that sell bins, must provide written evidence or certification that the bins meet PCRC requirements.

Plastic collection bins include plastic bins, cans, carts, totes, roll carts, or other receptacles used to collect recyclables, compostable materials, or garbage used by solid waste collection services.

Deposit Return System. As an alternative to satisfying its compliance obligation under the PRO program for qualifying beverage containers of participating producers, a PRO is not required to consider qualifying beverage containers to be covered products under the PRO program upon a distributor responsibility organization's (DRO) establishment and operation of a deposit return system (DRS) for the qualifying beverage containers.

The provisions of the DRS program do not apply to qualifying beverage containers unless and until a DRO, other than a single distributor acting as a DRO, is established and files a written notice with Ecology at the time of PRO registration, that the DRO will establish and operate a DRS.

Upon the receipt of the written notice by Ecology, all qualifying beverage containers of all producers subject to the PRO program cease to be considered covered products for purposes of the PRO program and are instead subject to the requirements of the DRS program.

"Distributor" means every person or entity who engages in the sale of beverages in beverage containers to a dealer in this state, including any producer who engages in such sales, and dealers who self-distribute their own brands.

"Dealer" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.

"Distributor responsibility organization" means an individual distributor or a PRO formed as a cooperative association that is designated by a group of distributors representing the majority of beverages sold in qualifying beverage containers in the state, to develop and carry out activities required of distributors by the DRS program.

"Qualifying beverage containers" mean any individual, separate, sealed glass, metal, or plastic bottle or can, except for a carton, foil pouch, drink box, or metal container that requires a tool to be opened, that contains any beverage intended for human consumption and in a quantity less than or equal to 2.5 gallons. Beverage containers for dairy milk and infant formula are not considered qualifying beverage containers.

Distributor Responsibility Organization Creation and Registration. Each distributor that sells or distributes in or into Washington qualifying beverage containers must either join a DRO or must independently fulfill the duties of a DRO. This requirement takes effect four months after a PRO or a DRO, other than a single distributor acting as a DRO, notifies Ecology of its intent to operate a DRS program. A distributor that has not joined a DRO or registered as an independent distributor may not sell or distribute beverages in qualifying beverage containers in or into Washington three months after this date.

To qualify as a DRO for purposes of establishing the DRS, an organization must

demonstrate to Ecology that its member distributors distributed the majority of beverages in qualifying beverage containers sold or made available for sale in the state during the most recent year for which such distribution data are available.

Four months after notification of the intent to operate a DRS, a DRO or independent distributor must register with Ecology and submit with its registration a list of the member distributors, their brands of beverages, members of the board of directors or other governing structure of the DRO, a description of qualifying beverage containers, and the total gross sales volume of beverages in qualifying beverage containers distributed by the distributor or member distributors in Washington during the most recent year for which such data are available.

By December 31st of the year of initial DRO registration and every December 31st thereafter, a DRO registered with Ecology must submit an annual payment to fund the costs to implement, administer, and enforce the program, one-half of the costs of the advisory council, and one-half of the costs for a new or updated performance rates study.

Within 180 days of the adoption of rules related to the program, a DRO must submit a plan to Ecology that meets the requirements of the program.

A DRO registered with Ecology must implement a DRS no later than two years after registration with the department.

Refund Value. Every qualifying beverage container sold or offered for sale in the state must have a refund value of \$0.10. Ecology must determine, by rule, an additional premium refund value for containers returned by a nonprofit organization that is approved by the DRO and serves very low-income individuals who rely on regular container refunds through the DRS as a source of daily funds.

Every qualifying beverage container must clearly indicate by embossing or by a stamp, label, or other method securely affixed to the container, the refund value of the container, as determined by rule by Ecology.

Deposit Return System Performance Requirements. A DRO must demonstrate that all qualifying beverage containers distributed by its member distributors are designed to be reusable or recyclable by January 1, 2031, according to criteria established by Ecology.

For materials reclaimed under a DRS, the calculation point for the redemption rate is the number of qualifying beverage containers redeemed statewide by the DRO divided by the number of qualifying beverage containers sold in the state by members of the DRO.

At a minimum, each DRO plan must achieve the following performance requirements:

- by 2028, a minimum of 60 percent of all qualifying beverage containers are reused or recycled through the DRS, and a minimum of 5 percent are reusable;

- by 2030, a minimum of 10 percent of all qualifying beverage containers are reusable;
- by 2031, a minimum of 80 percent of all qualifying beverage containers are reused or recycled; and
- by 2035, a minimum of 25 percent of all qualifying beverage containers are reusable.

Deposit Return System Plan. No later than 12 months after a DRO has been approved by Ecology, the DRO must submit a DRS plan to Ecology. The plan must:

- impose a refund value for all qualifying beverage containers under the plan;
- identify methods for collecting qualifying beverage containers from consumers and for paying consumers the refund value of qualifying beverage containers; and
- include other elements to meet program requirements.

Initial plans may address no more than three calendar years, and within two years of plan implementation, a DRO must submit an updated plan for the following five calendar years. Subsequent plans must address five calendar years of operation and are valid for no more than five years. For all plans submitted after the initial plan, a DRO must submit the updated plan to Ecology one year prior to the expiration of the current plan.

Operation of Deposit Return System. A DRO must, at its own cost, provide a convenient bulk drop-off option for bagged qualifying beverage containers at geographically dispersed locations in Washington. The drop-off locations must be at locations convenient to locations that sell beverages in qualifying beverage containers.

A DRO may not charge customers for the drop-off service and must credit the cost of any required bag purchase back to the customer when the bag is processed. If drop-off bags are made of plastic film, the bags must have a minimum 50 percent recycled content.

Every DRO must identify in its plan and on its website, maps of each area where drop-off and other collection services for qualifying beverage containers are available.

A DRO must establish at least 270 bag drop-off sites around the state, distributed by county in proportion to the volume of qualifying beverage containers sold in the county. Bag drop-off sites may be located at dealers, or any publicly owned facility convenient to the dealer, but dealers or publicly owned facilities are not obligated to accept returned qualifying beverage containers or to allow a bag drop-off site to be sited at the dealer or publicly owned facility.

The DRO is not required to accept or pay refunds for any beverage container that:

- visibly contains or is contaminated by a substance other than water, residue of the original contents, or ordinary dust;
- is crushed, broken, or damaged to the extent that the brand appearing on the container cannot be identified; or
- for which the DRO has evidence was not purchased through the state's DRS, or for which a refund has already been given.

Distributor Responsibility Organization Reporting. Beginning July 1st of the year after an approved program begins to be implemented, each DRO must submit an annual report to Ecology for the preceding calendar year of plan implementation. Each report must include data, descriptions, and other information sufficient to allow Ecology to determine whether a DRO has fulfilled its obligations under the program for the preceding calendar year.

Each annual report must include the final destinations of recycled material managed by the program, the number of qualifying beverage containers supplied and returned in the state in aggregate, and by material categories and member distributors, the annual redemption rate in aggregate, the total annual budget for the DRO, the total value of unclaimed refunds, and the total cost of implementing the DRS, as determined by an independent financial audit.

Unclaimed Refunds. The entire value of unclaimed refunds collected under the program, whether held or retained by distributors or by the DRO, must be invested in operations and infrastructure supporting the reuse and recycling of qualifying beverage containers in Washington.

Payment for Other Collection Methods. The DRO must accept and pay the full refund value for any qualifying beverage containers presented to it by material recovery facilities, government entities, and other processing facilities handling recyclable materials as long as the qualifying beverage containers have been collected and separated in accordance with standards established by the DRO, and those standards have been approved by Ecology.

DRO Stakeholder Consultation. Registered DROs must maintain a public website informing the public of plan implementation details, including collection services and locations for each type of qualifying beverage container, and a current list of all participating member distributors and brands.

Prior to submitting a plan to Ecology, a DRO must conduct a consultation process to directly and actively involve stakeholders in development of key plan elements. The DRO, through the consultation process, must solicit and respond to input and recommendations from the advisory council and other stakeholders.

At a minimum, the consultation process must include:

- quarterly meetings open to the public with the advisory council throughout the plan development process to discuss and review key plan elements;
- consultation on reimbursement rates to be used for any services carried out by government entities and the service agreement template outlining terms and conditions for reimbursement;
- opportunities for all stakeholders and members of the public to provide comment on the plan;
- presentations for soliciting meaningful input on the plan, including workshops, surveys, webinars, and one-on-one meetings; and

- documentation of all comments received and a summary of responses provided by the DRO to be included with the submission of a plan to Ecology.

Education and Outreach. To support the achievement of performance rates and other program requirements, a DRO must develop and provide outreach and educational materials, resources, and campaigns about the program to be used by dealers, government entities, and nonprofit organizations.

A DRO must coordinate and fund the distribution and deployment of statewide promotional campaigns through media channels that may include print publications, radio, television, the Internet, and online streaming services.

A DRO must use consistent and easy to understand messaging and materials that are conceptually, linguistically, and culturally accurate for the communities served.

Some of the aims of education and outreach materials are to educate and engage with residents on recycling, reuse, and refill practices, describe where and how to redeem qualifying beverage containers, and reduce resident confusion regarding the recyclability of qualifying beverage containers.

A DRO must establish a process for answering customer questions and evaluate the effectiveness of education and outreach efforts for purposes of making progress toward performance requirements.

A DRO must coordinate with government entities that choose to participate in carrying out education and outreach activities and any other DROs to present a consistent statewide program.

Curbside Augmentation Fund. Ecology must create and administer a curbside revenue augmentation fund, funded by a DRO, for the first five years in which a DRO operates a DRS in the state. Beginning January 1st of the year following the year in which a DRO first operates a DRS, and each January 1st for the following four years, Ecology must accept requests annually from local governments, or operators of curbside recycling programs in the state to receive funds to offset revenue losses from the previous year.

These requests must include third-party audited financial data demonstrating any revenue losses from the value of scrap materials diverted from curbside recycling by a DRS, less any decreased operating costs from not collecting, hauling, processing, or landfilling the material.

Ecology must distribute funds to operators of curbside recycling systems proportionally, based on valid requests and available revenue in the fund.

Deposit Return Organization Program Account. The Deposit Return Organization Program

Account is created for implementing, administering, and enforcing the requirements of the DRS program. All receipts received by Ecology under the program must be deposited in the account.

Damages for Failure to Pay Refund Value. Unless specified in a DRO's bylaws or in a contract between a DRO and an individual distributor arranging specifically for the collection of beverage containers sold for the purpose of consumption on premises, any manufacturer, distributor, or importer that fails to pay to the DRO the refund value of beverage containers included in the program is liable to the DRO for treble the unpaid refund value and treble the collection costs incurred by the DRO for any beverage containers that were sold without the refund value of the container being remitted to the DRO.

Program Management Standards. PROs, DROs, government entities, and service providers implementing the program must manage covered products in a manner consistent with the state's solid waste management hierarchy.

Covered products and qualifying beverage containers collected by each program must be responsibly managed at facilities operating with human health and environmental protection standards that are broadly equivalent to or better than those required in the United States and other countries that are members of the Organization for Economic Cooperation and Development.

PROs and DROs implementing a plan must include measures to:

- track, verify, and publicly report that the responsible management of covered products and qualifying beverage containers collected by the program is maintained and that recycled materials are delivered to a responsible end market;
- promote and facilitate reuse of covered products and qualifying beverage containers designed to be reused;
- meet the necessary quality standards for recycled materials so that covered products and qualifying beverage containers may be used to manufacture new products;
- document locations of all material recovery facilities and other processing facilities used to meet program requirements; and
- describe whether the processing facilities were preexisting, planned, or under construction as of plan approval.

Prior to program use of any alternative recycling process for conversion of post-use plastic polymers for the purpose of producing recycled material to be counted toward performance rates under each program, the PRO or DRO must seek Ecology's approval and submit a third-party assessment of the process's environmental impacts. For a process to be approved, Ecology must determine that the alternative process produces similar or lesser impacts than those produced in recycling that uses purely mechanical means based on environmental impacts, such as air and water pollution and energy efficiency.

Material recovery facilities and other processing facilities receiving covered products collected through PRO program activities must measure and report annually to Ecology, by commodity types and material category, on several parameters associated with covered products, including:

- tons received, by jurisdiction and service provider;
- inbound and outbound material quality and contamination;
- outbound material tons and end markets by commodity type;
- management of contaminants and residue to avoid impacts on other waste streams or facilities;
- emissions of pollutants to air and water; and
- labor metrics including, but not limited to, wages, unions, and workforce demographics.

All data must be verified by an independent third party and shared with each PRO for which the material recovery facility provides a service.

To facilitate recycling of covered products back into covered products and encourage development of circular economic activity, material recovery facilities and other processing facilities handling materials under each program must prioritize agreements with and on behalf of producers, distributors, PROs, or DROs regarding long-term contracts and other purchase agreements based on fair market pricing for commodities of comparable quality.

Advisory Council. An advisory council of members representing local government, environmental and community-based organizations, the recycling industry, tribal or indigenous solid waste organizations, producers, retail, and others is established.

Advisory council members must be appointed by the director of Ecology by January 1, 2024. In making the appointments, Ecology must appoint members that, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state, and must consider recommendations from relevant groups or associations and from individuals interested in participating on the council.

The terms of initial appointments must be staggered to two- and three-year appointments, with subsequent terms of three years, and members are eligible for reappointment.

The council must elect a chair and vice-chair and adopt bylaws and a charter for its operation of business.

The council must meet at least once every three months for the first three years, at times and places specified by the chair. The council may also meet at other times and places, including virtually, as specified by the call of the chair or a majority of members.

Ecology must provide staff support and facilitation as necessary for the council to carry out its duties, and may select an impartial, third-party facilitator to convene and provide

administrative support.

Council duties including advising and making recommendations on PRO and DRO plans, reports, Ecology rulemaking, the performance rates study, and the statewide needs assessment.

Prohibition on Uses of Funds. A PRO or DRO may not use program funds for costs associated with program penalties, litigation between the PRO and the state, lobbying, or advertisements related to the passage of legislation.

This requirement does limit the authority of a PRO or DRO to collect funds, such as through a special assessment, for these purposes or for other non-program purposes.

Department Duties. Ecology must implement, administer, and enforce the PRO program and DRS program. Ecology must prepare a workload analysis that identifies the projected annual costs to implement, administer, and enforce these programs, in the next fiscal year, and determine a total annual fee payment to be paid by each PRO and DRO that is adequate to cover, but not exceed these costs.

Ecology must apply any remaining annual payment funds from the current year to the annual payment for the coming fiscal year, if the collected annual payment exceeds the identified costs for a given year, and increase annual payments for the coming fiscal year to cover the identified costs, if the collected annual payment was less than the amount required to cover those costs for a given year.

Ecology must review and approve plans, reports, and PRO proposed performance rates, and make them available for public review.

Ecology may by rule require PROs to fund activities to make convenient collection services available for recycling of covered products from locations or entities determined to be significant sources of covered product waste and that are additional to those locations identified under convenience standard requirements. These locations or entities may include, but are not limited to, public places and official gatherings. Rules for these additional collection services apply to PROs no earlier than January 1, 2029, and may be updated no more frequently than every five years.

Ecology must maintain a website that lists each PRO and DRO along with its members and covered products and makes available each plan and annual report received by Ecology.

Contingency Plans. PROs and DROs must submit a contingency plan to Ecology demonstrating how the activities in the plan will continue to be carried out by some other entity, if needed, such as an escrow company:

- until such time as a new plan is submitted and approved by Ecology;
- upon the expiration of an approved plan;

- in the event that the PRO or DRO has been notified by Ecology that they must transfer implementation responsibility for the program to a different PRO or DRO;
- in the event that the PRO or DRO notifies Ecology that it will cease to implement an approved plan; or
- in any other event that the PRO or DRO can no longer carry out plan implementation.

The contingency plan must be submitted as a component of the PRO's initial plan submitted to Ecology.

Penalties. Ecology may impose a civil penalty up to \$1,000 per violation per day on any person who violates PRO or DRS program requirements or any PRO or DRO that violates the PCRC requirements applicable to PROs and DROs, and up to \$10,000 per violation per day for the second and each subsequent violation.

A DRO must pay a penalty to Ecology equal to \$0.10 for every unredeemed container that falls short of program performance requirements.

Upon notification to a PRO or DRO that it has not met a significant program requirement, Ecology may, in addition to assessing penalties, issue a corrective action order, issue an order to a PRO or DRO to provide for continued implementation of the program in the absence of an approved plan, revoke the PRO or DRO's plan approval and require the PRO or DRO to implement its contingency plan, require a PRO or DRO to revise or resubmit a plan, or require additional reporting related to compliance.

Prior to taking these actions, Ecology must provide the PRO, DRO, producer, or distributor the opportunity to respond to or rebut the written finding upon which the action is predicated.

After October 1st of the first year in which a DRO is registered with Ecology, and after notification of noncompliance and a 60-day period in which the DRO has the opportunity to remedy the noncompliance, Ecology must impose a civil penalty once per year to any distributor that fails to participate in a DRO, which is the greater of \$0.10 per qualifying beverage container sold or made available for sale by that distributor in the state, or \$10,000.

Any person who incurs a penalty may appeal the penalty or order to the Pollution Control Hearings Board.

Penalties levied against PROs are deposited in the Responsible Packaging Management Account and penalties levied against DROs are deposited in the Recycling Enhancement Account.

Feasibility Study. By December 1, 2025, Ecology must complete and publish on its website a feasibility analysis to:

- identify options to improve the convenience experienced by consumers with unwanted products or packaging covered by state product stewardship, extended producer responsibility, and similar takeback programs, by harmonizing or establishing a system of common or centralized takeback centers or depots for consumers; and
- consider the viability, costs, and tradeoffs associated with each option that might lead to improved outcomes for consumers and improved end-of-life management outcomes for covered unwanted products.

Ecology must deliver policy recommendations to the Legislature by December 1, 2025.

Litter Tax Study. In consultation with PROs and DROs, Ecology and the Department of Revenue (DOR) must study:

- the impacts of producer and distributor requirements under the PRO and DRS programs on the litter rates of covered products and qualifying beverage containers; and
- possible improvements to the structure of the litter tax, including but not limited, administration, compliance, and distribution of the tax and application of the tax to certain products, for achieving its purpose.

By January 1, 2029, Ecology, in consultation with DOR, must provide recommendations to the appropriate committees of the Legislature on:

- applicability of the litter tax to covered products and qualifying beverage containers, based on whether the purpose of the litter is being achieved for those products by the requirements of the PRO and DRS programs; and
- improvements to the structure of the litter tax for meeting the tax's purpose.

Appropriation: None.

Fiscal Note: Requested on January 6, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (January 17, 2023): PRO: The bill is a much needed modernization of the recycling system, building on work from four years ago when statewide goals were adopted for recycling standards and recycled content for plastic. Today's bill includes recommendations from that 2019 report and brings producers together to reduce statewide packaging and ensure that waste in bins gets turned into something new. Those of us who do recycle play a daily game of can it be. Much of what we think is recyclable can't be recycled. You can't drive down the highway or go to a park without seeing litter. Things won't change unless we act. This system has been in place in Europe and Canada for years resulting in more recycling and less garbage. It has recently been

adopted in other states and it is time for the Evergreen State to take action.

The bill was vetted in the legislative process last year and is ripe for passage this year. There is a statewide coalition that recognizes that recycling can do better. It's a big bill that addresses the system holistically. It's important that producer responsibility and beverage deposit go hand in hand for optimal systems.

We want to increase the performance and success of the recycling system but the current process has got us as far as we can. Residents are dealing with a constantly changing waste stream. Those making the decisions are not necessarily facilitating recycling improvement. The bill will increase access to curbside recycling in the state. Only about half of current waste in the system is recycled. There is a need to improve commodity markets to create a circular economy. Reducing waste will also help reduce emissions and help us achieve state greenhouse gas goals.

The WRAP act protects enjoyment of wildlife and habitat and the environment we live in, without the plastic litter that ends up in these places. The act inspires hope in our citizens. Our environment is our legacy. Recycling is something that people wished they had more access to. The bill holds producers of plastic accountable for pollution from their products.

CON: We do believe work can be done to address issues raised, like the definition of producer and the goal setting process and the way the PRO is set up. We are concerned about timeframes for registration, inclusion of a source reduction goal, recycled content rates, and the excessive PRO consultation process.

We are concerned about protection of existing infrastructure and investments. The bottle bill would undermine existing investments and is problematic and burdensome, requiring sites to hold on to bottles until pick up. We are asking that FDA and other federally regulated products be exempt. The current exemption process is cumbersome and puts industries at risk. There is not a specific exemption for excluding packaging recycled outside of the residential system.

Small stores do not have the ability to be producers. We would ask for an additional study to look at impacts to product costs. This bill doesn't address commercial recycling, which is one of the biggest problems in recycling. We have very good recycling rates compared to the rest of the nation. Low hanging fruit in states with low rates such as Colorado will not be addressed with this bill and it will lead to increased costs for consumers.

Nationally, paper product recyclability rates are high, with sustainable end markets. We have concerns about cross material subsidization, and want to ensure producers are responsible for their own products. We would like to see additional tools to allow innovative technologies to enable recycling. We would like to see a needs assessment before passage of the bill. We have concerns over the reuse and refill requirements and the wine industry would like to be able to use a QR code over any labeling requirements.

OTHER: EPR policies should provide convenience to consumers, be financially sustainable, offer materials to producers for closed loop recycling, and achieve positive environmental outcomes. We have supported other states that have embodied these principles but the current version of the bill adds layers of bureaucracy and audits. Oregon has a successful deposit program that is popular with residents there. The goal is to work with the sponsors and take the best of the Oregon system and build from there.

A successful program can provide equitable and universal access and improve current recycling systems and programs. We are pleased to see best practices from other EPR bills in the current proposal, such as use of the assessment to inform performance rates. We would like to see the program start with a single PRO before opening it up to additional PROs.

The WRAP act would modernize and improve the system, increasing recycling access across the state. We are excited to see incentives to increase recyclability and reusability and a statewide list of recyclables. We would like to highlight lost revenue in curbside systems from deposit program and would like to see support for this.

We are supportive of a well structured deposit return system for quality glass leading to higher recycling and reuse rates. We are supportive of refill and reuse rates, but it is a bit of a steep goal. Infrastructure needs to be established before refill goals can be reached. Newsprint is the single most historically recycled product and most valuable product in the recycling system until the onset of internet commerce.

Persons Testifying: PRO: Senator Christine Rolfes, Prime Sponsor; Mignon Senuta, Digimarc; Kate Bailey, The Association of Plastic Recyclers; Ramsey Doudar, Patients & Users for Reasonable Policy (PURP); Ann Murphy, League of Women Voters of Washington; Marlene Feist, City of Spokane; Scott Hazlegrove, WA Beer & Wine Distributors Association; Ezra Eickmeyer, Terramer Inc.; Thessalonika BENNY; Clifford Traisman, Washington Conservation Action; Carl Schroeder, Association of Washington Cities; Brenda Fincher, City of Kent Councilmember; Melissa Stuart, City of Redmond Councilmember; Pam Clough, Environment Washington; Manya Gupta, Juanita High School (student); Giovanni Severino, Latino Community Fund; McKenna Morrigan, Seattle Public Utilities; Preston Peck, City of Tacoma | Environmental Services Department; Pat McLaughlin, King County; Staci McMahon, Seattle Aquarium; Blair Englebrecht, Puget Soundkeeper Alliance; Charlie Schneider, WashPIRG Students; Annabella (Bella) Hillyer, UW student; Dax Tate, WashPIRG; Heather Trim, Zero Waste Washington.

CON: Andrew Hackman, AMERIPEN; Christopher Reigelsperger, Waste Management; Samantha Louderback, Washington Hospitality Association; Carlos Gutierrez, Consumer Healthcare Products Association (CHPA); Katie Beeson, Washington Food Industry Association (WFIA); Vicki Christophersen, Washington Refuse and Recycling Association; Candace Joy, WA State Veterinary Medical Association; Steve Wulf, Sunshine Disposal;

Rodd Pemble, Sanitary Service Company; Ron Phillips, Animal Health Institute; Mark Gingrich, Waste Connections; Craig Smith, Food Northwest; Darbi Gottlieb, AdvaMed; Erin Hall, American Forest and Paper Association; Brandon Houskeeper, Northwest Grocery Association; Jacob Cassady, Association of Home Appliance Manufacturers (AHAM); Rowland Thompson, The Wine Institute; Tim Shestek, American Chemistry Council; Logan Harvey.

OTHER: Alex Truelove, Biodegradable Products Institute; Eric Chambers, Oregon Beverage Recycling Cooperative; John Worthington; Laurie Davies, Washington State Department of Ecology; Brad Boswell, Washington Beverage Association; Dylan de Thomas, The Recycling Partnership; 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 (GPI); Rowland Thompson, Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association; Mark Johnson, Washington Retail Association; Josh McDonald, Washington Wine Institute.

Persons Signed In To Testify But Not Testifying: PRO: Ramsey Doudar, Patients & Users for Reasonable Policy (PURP).

CON: Carol Patterson, Foodservice Packaging Institute; Wendy Weiker, Republic Services; Peter Godlewski, Association of Washington Business.

OTHER: Heidi McAuliffe, American Coatings Association; Daniel Groce, Novelis; Mike Smaha, Can Manufacturers Institute; James Toner, IBWA; John Worthington.

Staff Summary of Public Testimony (January 18, 2023): CON: We would like to highlight the need for stronger exemption consideration for FDA and USDA products. The current process is cumbersome. We would like to see the needs assessment done before passage of the bill.

OTHER: Washington has a chance to make history in being the first state to pass a modern container deposit return program. However, the existing framework can work better.

Persons Testifying: CON: Peter Godlewski, Association of Washington Business; Rebecca Francik, Basin Disposal.

OTHER: Daniel Groce, Novelis.

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