

HB 1204 and SB 5397

Bill Summary

February 20, 2019

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

Brief Description: [HB 1204/SB 5397](#) Concerning the responsible management of plastic packaging. Would require the brand owners of products that are packaged in plastic to fund and operate a management program for all plastic packaging that is sold into Washington State.

Digest: Prohibits a producer of plastic packaging, beginning January 1, 2022, from selling, offering for sale, or distributing plastic packaging for use in the state unless the producer is participating in a plastic packaging stewardship organization with a plan approved by the department of ecology. Requires each producer, by June 1, 2021, to ensure that a plan is submitted on its behalf to the department of ecology by a stewardship organization. Exempts retailers that are not producers from the requirements of this act. Allows the department of ecology to administratively impose a civil penalty on a person who violates this act in an amount of up to one thousand dollars per violation per day. Creates the responsible plastic packaging stewardship account.

House Sponsors: Representatives Peterson, Doglio, Frame, Slatter, Macri and Goodman

Senate Sponsors: Senators Rolfes, Carlyle, Darneille, Saldaña, Hasegawa, Hunt and Kuderer.

Legislative Bill Pages:

[HB 1204 https://app.leg.wa.gov/billsummary?BillNumber=1204&Chamber=House&Year=2019](https://app.leg.wa.gov/billsummary?BillNumber=1204&Chamber=House&Year=2019)

[SB 5397 https://app.leg.wa.gov/billsummary?BillNumber=5397&Year=2019](https://app.leg.wa.gov/billsummary?BillNumber=5397&Year=2019)

Section by Section Summary:

Section 1. Findings

This section describes the issues and concerns uniquely addressed by the bill. Specifically, global policy changes regarding waste have dramatically weakened recycling markets in Washington. Plastic packaging is of particular concern. In addition to its many benefits, plastic packaging is detrimental to the environment and the economy. Currently, management costs are borne by consumers, rate payers, and local governments. Section 1(1).

In order to address this situation, plastic packaging producers must be fiscally involved in the management of plastic packaging, from design, through end-of-life recycling, and disposal. Such involvement will drive research and design to lessen environmental impacts, improve resource recovery, and increase market use of recycled plastic feedstock. Section 1(2).

Section 2. Definitions.



In this section, definitions are provided for key terms and concepts used throughout the bill. Some additional terms, used only once in the legislation, are contained and described in subsequent sections and not in the definitions section. Section (2).

The following terms are of particular importance:

Plan: This refers to the information producers must provide describing how they will arrange to manage plastic packaging in Washington, and fulfil the requirement of this act. Section 2(14).

Plastic Packaging: This means packaging made from plastic, even if it's combined with or bonded to another material, and includes aseptic containers. Covered packaging refers to items use to protect, contain or transport a product, or attached to a product for marketing that product. It also covers plastic bags and food service products. Packaging that meets specific compostability specifications is not included. Section (15).

Producer: Producers are responsible for meeting the requirements of this act. In descending order of priority, producers include: a) the entity that has legal ownership of the brand, brand name, or cobrand of the product to which plastic packaging is applied; b) the first importer of a product to which packaging is applied; c) the retailer of a product to which packaging is applied and that was acquired from an importer that is a producer; d) the entity that elects to assume responsibility for the plastic packaging and registers in lieu of the producers just described. This approach places the greatest responsibility on the product brand owner, who arguably has decision-making control over what packaging is used for their product. This approach also allows flexibility for a number of private sector arrangements to meet the obligations of the bill. For example, a retailer, like Best Buy, could take responsibility for the HP products that come in cardboard-backed blister packs. Section (19).

Section 3. Requirement that Producers Participate in Approved Stewardship Plan

This section requires that beginning on Jan. 1, 2022, producers of plastic packaging must participate in a plastic packaging stewardship organization, and have a program plan that has been approved by the Department of Ecology. If they are not part of a plan, the plastic packaging producer won't be allowed to sell or distribute plastic packaging in Washington. This requirement to participate in a plan is important because it establishes a level playing field so packaging producers can't avoid paying into the system while still having their packaging managed. Section 3(1).

Section 3 further establishes a program "start-up" date (Section 3(2)), and allows producers to work either individually or jointly in a stewardship organization; in both cases they have to create a stewardship plan that is approved by Ecology.



To avoid undue hardship, plastic packaging producers can be exempted from participating in a stewardship organization, and from submitting a plan, under certain circumstances. Section 3(3). Producers are exempt if they:

- Generate less than one million dollars in annual revenue,
- Generate less than one ton of plastic packaging annually to Washington residents,
- Operate a single (non-franchised) retail point of sale, or are a retailer that is not considered a producer under the definitions of this bill (in Section 2(19)(c)&(d)).

These exemptions not only provide relief for small producers, they also avoid unnecessary work for the stewardship organization that would likely only capture minimal revenue and divert minimal quantities of plastic packaging from these exempt producers.

Section 4. Stewardship Plan Contents

This section outlines the components plastic packaging producers must include in the plans they submit to the Department of Ecology, whether they submit the plans individually or as part of a joint plan with other producers. Each stewardship organization (single or joint) has to describe how they will manage plastic packaging according to the required, specific program elements that are described in greater detail in Sections 5 through 15 of the Act.

At a minimum, each plan must include the following elements:

- Contact information for the stewardship organization, and which producers and brands are covered by that organizations program and plan. Section 4(2)(a).
- A description of the plastic packaging categories the plan will cover. These categories are groups of packaging that have similar properties, shape, or other attributes that the stewardship organization determines are useful for allowing the best possible collection and recycling of that given category. Grouping plastic packaging in this way is also meant to help streamline the assigning of program costs to appropriate packaging producers, and to help organize the reporting of data and program results. Section 4(2)(b).
- Each packaging category description must also include baseline information about how that type of packaging is currently managed within the state. And the management activities described should be further broken into the waste management hierarchies that are defined in this act (under Section 2(29)). Those categories, in order of preference, include: prevention & waste reduction, reuse, mechanical recycling, chemical recycling, and finally, energy recovery, incineration & landfill.
- Then, to prioritize best management practices and environmental protection, each category description must describe the producer's plan for managing each plastic packaging component in a way that moves it up the waste management hierarchy over



time, toward the preferred management options, such as waste prevention. That plan needs to specify the producer's proposed timeline to capture at least eighty percent of that packaging sold into Washington in that category per year. 4(2)(b)(ii)(A).

- For example, if PET beverage bottles are assigned to curbside collection as the current best practice for the PET bottle category, the plan should demonstrate how they intend to capture that quantity, as well as how they intend to move toward greater waste prevention and reuse. This could include plans to "leash the cap," thereby collecting more material, or to move toward refillables, thereby encouraging reuse.
- Producers also have to describe in the plan how any uncaptured material will be managed to avoid litter, and avoid contamination of compost and recycling systems. In other words, when targeted plastic packaging doesn't make it into a recycling process, it shouldn't escape management and cause litter, nor should it then harm or contaminate compostable or recyclable materials. And if the management system producers propose is energy recovery, incineration, or landfilling, then the producer needs to provide a publicly-available, comprehensive justification and analysis of this approach. Section 4(2)(b)(ii)(B) and Section 4(2)(b)(ii)(C).
- Taking a step back, Section 4 also requires that each plan lay out a process for the producers to tell Ecology the amount of packaging, in each major category, that producer sells into Washington each year. Without this information it would be impossible to determine what percentage of packaging is being recovered through the plastic packaging management systems. 4(2)(c).
- And to get a better sense of what plastic packaging is being missed by existing systems, Section 4(2)(d) requires that each plan provide a detailed snapshot of the plastic packaging found in litter. The litter analysis needs to identify the plastic category, as well as the brand, of each item, as well as whether it was found in a public place, freshwater, a marine environment, or in the materials managed at compost facilities and other places that manage organic wastes. Section 4(2)(d). It is hard to underestimate the power of knowing what brands are most responsible for litter; such information transparency is a big motivator for change.
- To understand how to capture the most packaging, and why some packaging is currently unsuitable for recovery, Section 4(2)(e) requires the plan to include an analysis of the amount of packaging in the waste stream that contains substantial food residue or food waste, thus making it unrecyclable. Think about it; if the packaging in question was made of certifiably-compostable plastic, then the packaging and the food residue could be jointly and safely included in the compost system, and not contribute to plastic contamination in the compost. For this reason, the plan also requires measurement of the amount of food waste that could have been diverted if the packaging had been



compostable. In this context, the plan must also describe how the stewardship organization will pay organics collectors and processors to prevent contamination by plastic packaging, or remove it from the stream during processing. Section 4(2)(i).

- Because no program works without financing, Section 4(2)(f) requires the plan to include a detailed budget and a description of the proposed funding mechanism. The packaging producer has to show there is enough funding to implement the stewardship program, and they must also explain the process for allocating the program costs to the producers participating in their plastic packaging management plan.
- Section 4 further requires the plan to describe how the stewardship organization will coordinate with the Department of Commerce, and other local economic development agencies, to fund investment in local infrastructure, business development, and job creation. Fundamentally, the stewardship approach to plastic packaging management is designed to return materials to commerce, thereby generating economic activity, beyond an economically-limited, one-way trip to the landfill. Section 4(2)(g).
- Litter prevention is another core aspect of minimizing the environmental impact of plastic packaging. Thus Section 4(2)(h) requires the plan to describe how the stewardship organization will fund, and work with, groups that collect plastic packaging litter from public places and Washington's freshwater and marine environments. Producers must also describe in the plan how the stewardship organization will provide incentives to reduce litter, improve packaging reuse and recyclability, and reduce or eliminate toxic substances in packaging. Such design changes are already taking place under similar programs in Europe and Canada.
- The plan must also outline a process to explore and create innovative ways to increase collection of plastic packaging produced by members of the given stewardship organization. This could include deposit systems, reverse vending machines, buy back centers, or other models. Section 4(2)(k).
- Recycling only works if you have something to do with the recovered material. And making recycled-content products only works if you have recovered feedstock to use in manufacturing. That is why this bill encourages recycling through a recycled content trade credit mechanism. This allows companies that excel in using recycled content in their plastic packaging to be rewarded, and encourages companies that fall short of established requirements to aim for higher percentages. This will be described in more detail below under Section 9. For now, this section simply requires that the stewardship organization plan to lay out how the producers will participate in the trade credit system. Section 4(2)(k).

Section 5. Stewardship Program Element: Collection



Collection is key for any recycling program, and so is accessibility. Section 5 establishes that all programs designed to minimize and recycle plastic packaging in Washington should be made available to all our citizens, which is why this section requires that stewardship organizations make convenient, widespread, and equitable collection available in every county and on all tribal lands, including rural areas and island communities. Some exceptions are allowed, through a consultation process, and product stewardship organizations are given much flexibility to achieve such broad collection through a variety of means, including the familiar curbside collection, depot drop-off locations, retailer take-back, and other creative channels. Section 5(1).

In order to make the greatest use of existing infrastructure, the plastic packaging collection options proposed by the stewardship programs must include curbside and multifamily collection services offered through municipal and tribal governments and contracted services, or through regulated waste collection companies. Section 5(1)(a).

To make sure this really works on the ground, product stewardship programs must fully compensate municipalities as well as collection, sorting, and processing companies, to use existing curbside, multifamily, and other collection programs for the management of plastic packaging. Section 5(2).

Additionally, in recognition of market constraints, the use of existing curbside and multifamily collection services is only required if:

- The plastic packaging category is suitable for curbside collection and can be effectively sorted by the facilities receiving the packaging;
- The collection provider agrees to accept the packaging category in the mix of materials they collect, and they agree to the financial compensation offered by the stewardship organization;
- The plastic packaging category isn't already handled through a deposit and return program, or a buy back system; Sections 5(1)(a)(i, ii, iii).

And if plastic packaging destined for disposal is to be managed through a curbside program, such services may only be provided by municipal programs, municipally contracted programs, or regulated solid waste companies. Section 5(1)(b).

Finally, given that products, markets, and processing technologies are always evolving, this section requires product stewardship programs to occasionally survey and audit material streams to make sure the current approach is still providing effective and convenient statewide collection. Section 5(1)(c).



Section 6. Stewardship Program Element: Sorting, Reprocessing and Marketing-related Requirements

Even the best plastic packaging collection system in the world will be hamstrung if the material isn't properly sorted, processed, and sent to market. This section requires the stewardship programs to only direct collected packaging to facilities proven to effectively sort and process the material before they send it in market-ready form to facilities prepared to return the material to market in new products. Section 6(1)(a).

If the plastic packaging collected in Washington is exported for recycling, the stewardship organization must be able to track, verify, and transparently report that such processing meets or exceeds environmental and social standards substantially equivalent to those in practice in the United States. Section 6(1)(b).

In order to greatly increase the chances that the material is truly market ready, and will enter commerce, rather than being wholly or partially disposed as non-marketable waste in the receiving country, local processors that want to export collected plastic to countries that are not part of the Organization for Economic Cooperation and Development must first sort the plastic into specific resin types, and cannot export collected packaging as mixed plastics. Section 6(1)(c).

To further assure program success, Section 6 requires that financial and other incentives offered in stewardship plans to drive collection and processing are sufficient in structure and quantity to prioritize management options in line with the waste management hierarchy defined in Section 2. With regard to recycling specifically, stewardship plans must prioritize high quality processing output that meets the supply requirements of facilities that use recycled content feedstock. Section 6(2). And even more specifically, the recycling emphasis should be on turning plastic packaging back into a product similar in nature, function, and quality to the original package, rather than into a product of lesser value. Section 6(3).

Section 7. Stewardship Program Element: Prevention of Litter

Plastic packaging makes up a significant percentage of litter found on land and in freshwater and marine environments. Product stewardship programs must prevent plastic packaging from becoming litter in the first place, and must further address the litter issue by funding, and working with, groups that collect packaging litter in Washington, as well as by working upstream with producers to reduce litter through design improvements and program changes. For example, this could include leash-the-cap campaigns for plastic bottles, the modern equivalent of captive pull-tabs on cans.

Section 8. Stewardship Program Element: Outreach, Communications, and Education

If a plastic packaging producer's stewardship program is to prove effective, it has to drive material to its collection infrastructure through effective outreach, education, and broad



communication. Such effectiveness is measured by whether the reuse, collection, and prevention goals described in Section 4 of the bill are achieved. Furthermore, such outreach, education, and communication must minimize plastic packaging contamination in other systems, such as organics or disposal management approaches.

To achieve sufficient reach, and assure program participation, stewardship plans have to work with the multi-party advisory committee (see Section 14), as well as with public and private recycling and waste companies. Section 8(1).

Program success also demands reaching our State's diverse ethnic populations through translated and culturally appropriate materials, including in-language and targeted outreach. Section 8(3) requires such activities be included in product stewardship programs if the plans are to be considered compliant.

Compliant programs must also establish consumer web sites and mobile apps that clearly communicate how to prevent plastic packaging, and how consumers can access and use collection sites for plastic packaging. Section 8(4).

The program is also required to measure and demonstrate the effectiveness of all outreach approaches, and perceived convenience, for all key audiences, including diverse ethnic, rural, and island communities. Assessment techniques should include focus groups, waste characterization studies, recycling cart surveys, and other approaches. To provide a sense of status and change over time, these assessments should be conducted at least as often as, but before, each product stewardship plan update. Section 8(6). (The update frequency is spelled out in Section 12.)

Section 9. Stewardship Program Element: Financing of Stewardship Program Activities at Specified Levels

Nothing drives recycling collection and processing like a strong market for the recovered material. Demand pulls supply. Couple this with the demonstrated environmental benefits of incorporating recycled-content into products, and you have the rationale for the recycled content trade credit mechanism required in Section 9. This tool allows producers flexibility in how they meet the recycled-content requirements laid out in Section 14.

The idea is that producers who use more than the required recycled content in their products will generate surplus credits which they can sell or trade to those producers who do not achieve the recycled content requirement in their products. Surplus producers are also free to bank their credits, or even apply the credits to their own products that don't meet the recycled content requirements. Section 9(3).

Section 10. Stewardship Program Element: Cost and Expenditure Structure



If we shift responsibility for plastic packaging management from ratepayers and taxpayers, and assign it instead to producers and consumers, then it is only fair that we also give overall administrative responsibility to the producers who are being made responsible for managing these challenging materials.

Section 10 states that each producer, or group of producers, through their own plastic packaging stewardship plan, is responsible for paying all the administrative costs necessary to implement the program described in the plan. These costs include those incurred for all management channels, including reuse, recycling and disposal. The costs also cover all administrative collection and processing mechanisms such as municipally-run programs, contracted collection programs, UTC-regulated programs, and retailer take-back and drop-off systems. The producers also have to confirm any voluntary agreements from collectors participating in their plastic packaging stewardship program. And all handling must meet the environmentally sound reprocessing and marketing requirements described under Section 6. Section 10(1)(b)&(c).

On the expenditure side, this bill also helps support the fundamental market conditions to assure success. There is no use collecting material you can't suitably process. So, Section 10(2) requires that at least ten percent of program expenditures are dedicated to infrastructure development in Washington. This can include installing and upgrading sorting equipment to capture the material you want, or developing screening equipment to remove the components you don't want. This approach can also lead to local job generation as the program would be incentivized to upgrade equipment and build new facilities in Washington to process and re-manufacture plastics, rather than sending contaminated bales to other countries.

Another ten percent (or more) of expenditures are required to be spent on the back end of the system, cleaning up plastic litter in Washington. These funds are over and above those generated by the State's existing litter tax. The funds can also be spent on removing plastic contamination from compost and other organics processing facilities. Section 10(3)(a)(i)&(ii).

In the case of both of these expenditure requirements, the amount is to be based on the previous year's budget, or in the case of year one, on the initially budgeted expenditures. (Section 10(3)(b)). Overall, the funding for all the above activities has to be linked to, and sufficient to accomplish, the specific goals established for each plastic packaging stewardship plan under Section 4 of the Act. To set a floor for this funding pool, the Act requires that the funding level be no less than one dollar per Washington resident per year, and has to be adjusted annually for inflation based on the consumer price index.

Finally, to make sure that all costs to society that arise from having to manage plastic packaging are covered, Section 10(7) requires the program plan operating budget to cover reimbursement of the Department of Ecology's operating and administrative costs related to managing plastic packaging (as described in Section 16).



Section 11. Program Participation Charges for Producers

Product stewardship leverages market forces to drive environmental protection. That's why the costs are shifted from ratepayers and taxpayers to producers and the consumers who buy their products. This section of the Act builds on the power of the market by structuring how each plastic packaging stewardship organization charges the producers participating in their plan.

Each participating producer must be charged to participate. The fees must be structured to incentivize cooperation with groups collecting litter as well as with producers to increase waste reduction and recycling, and discourage designs and systems that increase costs for managing plastic packaging waste. Section 11(2).

For example, different producers within a plan can be charged different amounts based on factors that impact system costs. If your product comes in a plastic package that is glued to a cardboard hang-tag printed with inks containing heavy metals, you will be charged more than the product whose package is purely plastic. Section 11(2)(a).

The act requires that rates be variable based on the costs to manage each specific plastic packaging category, as well as on the category and brand of plastic packaging litter found on land, freshwater, and marine environments. Section 11(2)(a)(ii).

In fact, rates must be higher for plastic packaging that is bonded with other materials, or would have been recyclable but for its specific design, or includes labels, inks, and adhesives with heavy metals or other toxics. And rates must be lower for non-detachable caps and other litter prevention innovations, for non-food use reusable and refillable containers, and for packaging that is reused or refilled at a high rate. Sections 11(2)(b)&(c).

Rates must also be lower for packaging with post-consumer recycled content that exceeds the levels specified in Section 14, (but only if the producer's credits (see Section 9) have not been traded away. The lower rates should be variable, in line with the level of recycling content. Finally, a producer's packaging should also be assessed a lower fee if it is made of at least ninety percent by weight of post-consumer recycled content derived from plastic packaging, or from plastic packaging captured from land, freshwater, or marine environments. Section 11(2)(c)(iv).

Each of these mechanisms builds in market incentives to drive toward market use of recycled content plastic packaging, or toward minimizing such use.

Section 12. Stewardship Plan Updates and Amendments

Stewardship plans are the mechanism by which each plastic packaging stewardship organization communicates its approach to meeting the requirements of this Act. Given the



rapidly changing nature of plastic packaging, and equally rapid changes in the collection, processing, and production of plastic packaging, each plan must be updated two years after it begins, and then every five years after that. Section 12(1).

To assure broad input, and therefore the success of each plan, all updates must be created in consultation with the program's Advisory Committee and other stakeholders. The plan must then be submitted to the Department of Ecology for review and approval. The plan must also provide a public website with the information required under Section 4. Sections 12(1)(a)&(b).

If a program makes any modifications during the regular course of plan implementation, it must notify Ecology. Ecology will determine if the modifications are sufficiently large to require submittal of a proposed plan amendment developed by the stewardship organization, in concert with its advisory committee and other stakeholders. Section 12(2)(b).

Similarly, if a product stewardship program fails to provide services in each county, or otherwise falls short of plan and program requirements, a plan amendment must be submitted within ninety days of notification, describing modifications that will bring the plan into compliance. Section 12(2)(a).

When Ecology receives amended plans for review, they have ninety days to respond either with approval, or with disapproval and the reasons for the disapproval. If disapproved, the stewardship organization has sixty days to submit a revision with modifications addressing the causes for plan disapproval. Section 12(3).

Section 13. Stewardship Program Annual report

The annual report allows producers to clearly demonstrate their level of program compliance, and also provides transparent metrics that allow all parties to assess actual progress toward the goal of minimizing plastic packaging in the waste stream and environment. Ecology provides the format for the report, and each stewardship organization must submit one.

The report has to include updates on all the plan components outlined in Sections 4 through 15 of the Act, including collection, processing, marketing, litter clean up, and recycled content. More specifically, the producers must report on the progress made toward meeting the goals identified under Section 4, including the type and brand of each type of plastic packaging they have included in their plan, which should then be broken-out by whether it was found in litter, beach litter, freshwater and marine debris, and compost facilities. The report should also document the progress producers have made toward reducing the amount of plastic packaging in these same locations, and the level of compliance they have achieved with recycled content requirements. Sections 13(1)&(2).

Akin to the adage that you can't manage what you don't measure, the producers are also required to document the name, location, services provided, and the plastic packaging volumes



(by category) that are handled by each collection service and collection location, as well as managed by all sorters and processors. This data will give all stakeholders a clearer view of the infrastructure active in capturing and processing plastic packaging. The information will also help identify areas needing intervention and adjustment. Section 13(4).

Finally, this section requires a fundamental metric essential to the overall functioning and implementation of plastic packaging management in the state, namely, how much plastic packaging, by category, does each stewardship organization, or producer, sell in Washington each year? This figure not only provides an essential baseline against which we can measure key indicators, for example, source reduction in marine litter, it also helps us assess progress toward recycling. And of equal importance, this figure is critical for equitably allocating program costs to individual producers within individual stewardship organization plans. Section 13(5).

Section 14. Recycled Product Content Requirements Applicable to Collection Bins, Plastic Bags, and Rigid Plastic Containers

In order to drive collection, processing, and recycling of plastic packaging, the bill requires that certain, new plastic packaging contain recycled content. This market-pull mechanism will allow economics to drive environmental safeguarding by increasing demand for post-consumer plastic packaging for use as feedstock for new packaging.

Specifically, rigid plastic containers, like yogurt tubs, will have to have at least twenty-five percent post-consumer recycled content by January 1, 2023 to be allowed for sale in Washington. And if a producer's containers don't meet that minimum, they will be required to participate in their stewardship organization's post-consumer recycled content trade credit mechanism created under this act. Section 14(1)(a)&(b).

There are of course reasonable exemptions to align with any federal laws; furthermore all drugs and medical devices as defined in specific federal laws are exempt, as are rigid plastic packaging containers that contain, or are used for, transporting hazardous or toxic materials as defined by specific federal laws. Section 14(2).

In addition to rigid plastic containers, plastic bags are also required to have twenty-five percent recycled content by January 1, 2023. A variety of bags are covered, including such familiar and ubiquitous uses for garbage, waste container, carryout, shopping, produce, take-out food, home food delivery, newspaper, dry cleaning, wet umbrella, air shipping, and shipping envelopes. Bags that meet standards for compostability may also continue to be sold. Section 14(3).

As with rigid plastic containers, if a non-compostable plastic bag does not meet the minimum twenty-five percent recycled content, the stewardship organization must participate in the trade credit system. Section 14(4).



To further expand the market-pull for recovered plastic packaging, and because it just makes sense, there must also be a minimum twenty-five percent post-consumer recycled plastic packaging in plastic collection bins, cans, totes, toters, and other receptacles used for collection of recyclables, compostable materials, and garbage by solid waste collection services. Service providers are exempt if their existing contract was in place prior to August 1, 2019, but they must participate following any contract expiration or renewal. And if you make any of the above containers, you must provide readily available documentation of recycled content to the Department of Ecology, municipalities, retailers, and other interested parties. Section 14(5).

Section 15. Advisory Committee

Given the extensive list of stakeholders responsible for, and impacted by, plastic packaging, getting input from this broad set of voices will support a robust, plastic packaging management program that avoids unintended consequences, and that meets the goals of environmental protection, job creation, and economic sustainability. To that end, each stewardship organization must establish an advisory committee that represents the range of stakeholders relevant to packaging covered under their plan, including entities involved in collection, litter clean up, and Washington residents.

At a minimum, the advisory committee must also include at least one representative from each of the following ten groups; the Department of Ecology, cities (large, small, urban, rural), counties (large, small, urban, rural), public sector recycling and solid waste industries, private sector recycling and solid waste industries, recycled plastic feedstock users, public place litter programs, freshwater and marine litter programs, environmental organizations, and Indian tribes. The stewardship organization must also periodically solicit input from additional stakeholder and community members, explicitly including ethnically diverse populations. Section 15(1)&(2).

To assure that all parties are able to participate, despite likely economic hardship, the stewardship organization must reimburse expenses for participation in the advisory group by community groups, tribal groups, and non-profit organizations. Other participants can be reimbursed for travel expenses on an as-needed basis. Section 15(3).

To further assure that broad stakeholder input is considered and integrated into plastic packaging plans and implementation, the stewardship organization is directed to hold advisory committees at least annually, and must request comments prior to submitting plan updates or revisions. Advisory committee comments are to be reported to the Department of Ecology as an appendix to each stewardship organization's plastic packaging plan, update, or revision. Finally, a summary of advisory committee engagement must be prepared annually and submitted to Ecology as part of the stewardship organization's annual report. Section 15(5).

Section 16. Department Annual Fee structure



While the responsible management of plastic packaging falls to producers under this Act, Ecology will have an important administration and enforcement role to assure a level playing field among producers, and to oversee compliance with reporting, goal setting, and program implementation. The costs to Ecology for their responsibilities are considered part of running an effective statewide plastic packaging management program, and are therefore included in the overall costs assigned to producers. Section 16(1).

Ecology must determine the annual costs for program administration and enforcement, running on a cycle from July 1st to June 30th. Ecology must share that estimate with each stewardship organization by the April 1st prior to the July 1st cycle start date, and the stewardship organization must submit payment by that June 30th. The annual cost estimate and a full accounting must be made available for public review and comment for at least thirty days following Ecology's presentation of the annual fee to the stewardship organization on April 1st. Sections 16(2)&(3).

If there is more than one stewardship organization, the total cost of administration and enforcement is to be allocated on a pro-rated basis to each stewardship organization based on the amount of packaging sold into the state in the prior year by the producers covered under each stewardship plan. This assures an equitable allocation of costs across plastic packaging producers selling product into Washington. Section 16(2).

If at the end of a fiscal year there is unspent money, it must be retained in the responsible plastic packaging stewardship account established under this act, and applied to write-down the annual fee costs assessed to the stewardship organization(s) the following year. Section 16(4).

Prior to program start, and to cover Ecology's initial oversight, rule making, and administrative costs that arise prior to June 30, 2022, each stewardship organization must submit a payment of two hundred thousand dollars to the Department. Section 16(6).

Section 17. Department Oversight and Enforcement

To assure timely program administration and implementation, Ecology must review plans submitted by each stewardship organization within one hundred twenty days of receipt (except for amended plans as described in Section 12). Ecology must then approve all plans that meet requirements, and notify stewardship organizations if their plan was approved, and if not, why not. Section 17(1).

To assure transparency, once a plan is approved, Ecology must make that plan, and any amendments, available for thirty days for public review and comment. The plan should be posted on Ecology's website, with links to website for each product stewardship organization plan. Section 17(2).



In the event of violation of this chapter, Ecology can impose a fee of \$1,000 per violation per day; if that violation is knowing, intentional, or negligent, the fine may be \$10,000 per violation per day. Fined entities can appeal to the pollution control hearings board. Section 17(3).

Ecology must also adopt rules to define the content of the plastic packaging stewardship plan required under Section 4, as well as rules to determine program costs and how to proportionately apply them between stewardship organizations as described in Section 16. Ecology may also adopt other rules as needed to implement, administer, and enforce this chapter. Section 17(5).

Section 18. Expectations of Local Governments Whose Costs are Reduced as a Result of Program

The plastic packaging stewardship program is specifically designed to shift the costs of managing plastic packaging in Washington from taxpayers and ratepayers at large, to the producers responsible for utilizing that packaging and introducing it to the state. It is therefore anticipated that the current costs for managing plastic packaging incurred by local governments and by regulated service providers may go down as those entities are no longer responsible for the financial, and sometimes physical, management of plastic packaging. This burden and cost shift is all the more likely as plastic packaging producers under this program are expected to expand plastic packaging management beyond the services currently financed by local governments and ratepayers.

When such costs to local governments and service providers are reduced or replaced due to the plastic packaging stewardship management program, the governments and service providers are encouraged to invest at least ten percent of the savings on waste prevention for plastic packaging. Specifically, the emphasis should be on single use plastic packaging (designed to be used once before disposal, composted, or recycled), particularly that packaging found in public places such as streetside, beaches, freshwater, marine litter. The savings should further be used to reduce rates that would have gone to non-Utility and Transportation Commissions (UTC) regulated ratepayers. Section 18(1).

For service providers that are regulated by the Commission and receive payment for collection and sorting, they must report in their rate filings to the UTC any payments made to them by stewardship organizations, and must also report any other cost reductions related to their management of plastic packaging due to the stewardship programs. In this way the shifting of costs to the private sector will actually be reflected by a reduction in cost to the general, and ratepaying, public. It is more equitable for the costs of managing plastic packaging to be shared among the producers who specify it, and their direct customers who use it. Section 18(2).

Section 19. Account Created

Ecology collects funds from stewardship organizations to cover the plastic packaging stewardship program administration and enforcement costs. This section creates an account in



the state treasury in which those funds are to be held. To assure that the funds submitted by producers and stewardship organizations are only spent on activities related to plastic packaging stewardship, expenditures are only permitted after appropriation, and may only be used for implementing, administering, and enforcing plastic packaging stewardship programs.

Section 20. Conforming amendment to statutes establishing PCHB jurisdiction

This section simply updates the existing state law that governs the Pollution Control Hearing Board so as to give the Board jurisdiction to hear and decide any appeals over civil penalties that are imposed through Section 17.

Section 21. Codification Direction

This section provides code revisers with direction on where to place this act in the Revised Code of Washington.

Section 22. Severability Clause

This Section preserves the validity of all other provisions of the bill if any singular provision is found to be invalid.

