

SENATE BILL REPORT

SHB 1085

As Reported by Senate Committee On:
Environment, Energy & Technology, March 21, 2023

Title: An act relating to reducing plastic pollution.

Brief Description: Reducing plastic pollution.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Mena, Bateman, Reed, Fitzgibbon, Ramel, Peterson, Pollet, Berry, Walen, Doglio, Macri, Simmons, Thai, Cortes, Kloba and Ormsby).

Brief History: Passed House: 2/28/23, 97-0.

Committee Activity: Environment, Energy & Technology: 3/10/23, 3/21/23 [DP-WM].

Brief Summary of Bill

- Prohibits the sale, distribution, and installation of certain expanded or extruded plastic foam overwater structures, and of expanded or extruded plastic foam blocks and floats used in overwater structures.
- Prohibits lodging establishments from providing personal health or beauty products in certain plastic containers or wrappers.
- Requires any construction in which a drinking fountain is required under the International Building Code to also require the provision of a bottle filling station for each required drinking fountain.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Gregory Vogel (786-7413)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Regulation of Plastic Products. Since 1992, state law has required plastic bottles and rigid plastic containers to be labeled with a code identifying the type of resin used to produce the container. The types of plastic resin are categorized as:

- 1-polyethylene terephthalate (PETE);
- 2-high-density polyethylene (HDPE);
- 3-vinyl (V) or PVC (polyvinyl chloride);
- 4-low-density polyethylene (LDPE);
- 5-polypropylene (PP);
- 6-polystyrene (PS); and
- 7-other.

In 2019, the Legislature established goals for reducing plastic packaging and directed the Department of Ecology (Ecology) to evaluate and assess the amount and types of plastic packaging sold in the state and make recommendations to meet the goals.

In 2020 and 2021, the Legislature established a variety of restrictions on plastic products:

- retail establishments have been prohibited from providing single-use plastic carryout bags since 2021;
- expanded PS void-filling packaging products may not be sold or distributed in Washington beginning June 1, 2023;
- certain expanded PS portable cold storage containers and food service products are prohibited from being sold or distributed in Washington beginning June 1, 2024; and
- food service businesses may provide single-use food service products, including plastic single-use food service products, only if a consumer affirms that it wants the items, and utensils provided by a food service business may not be bundled or packaged in plastic in such a way that the consumer is unable to take only the type of utensil desired without taking other utensils.

Legislation in 2021 also established minimum postconsumer recycled content requirements for plastic beverage containers, plastic household cleaning and personal care product containers, and plastic trash bags.

Plastic household cleaning and personal care product containers include bottles, jugs, or other rigid containers with a neck or mouth narrower than the base and a minimum capacity of 8 fluid ounces and a maximum capacity of 5 fluid gallons.

Water Pollution Regulations and Programs. Washington law authorizes Ecology to implement the federal Clean Water Act's discharge program and state water pollution control laws. Through these programs, Ecology is authorized to issue federal and state water quality permits for persons that discharge to state waters.

The Hydraulic Project Approval (HPA) Program is a permitting process managed by the Washington Department of Fish and Wildlife (WDFW). Any activity that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state must

first obtain an HPA from WDFW. Through the HPA process, WDFW specifically analyzes and conditions projects based on the anticipated effect on fish life.

The Department of Natural Resources has responsibility for coordinating the cleanup, with other state agencies, of state and aquatic land pollution from plastic and other marine debris.

State Building Code Water Bottle Filling Station Provisions. The State Building Code Council (SBCC) is a state agency that adopts and triennially updates the State Building Code (State Code). The State Code adopted by the SBCC establishes the minimum building, mechanical, fire, plumbing, and energy code requirements applicable to the construction of buildings.

Provisions of the State Code adopted by the SBCC currently require buildings classified for educational occupancy, or Group E buildings, with an occupant load of 30 persons to include a minimum of one bottle filling station on each floor of the building. The bottle filling station may be integral to the drinking fountain. For all types of occupancies that require more than two drinking fountains per floor or secured area, the State Code authorizes bottle filling stations to be substituted for up to 50 percent of the required number of fountains.

Summary of Bill: Water Bottle Filling Stations Under the State Building Code. In any construction subject to the International Building Codes (Code) as adopted and amended by the SBCC in which a drinking fountain is required by a Code, the rules adopted by the SBCC must require, for each required drinking fountain, the provision of a bottle filling station or a combined drinking fountain and bottle filling station. The SBCC's rules must take effect by July 1, 2026, and may be updated periodically.

Plastic Health or Beauty Product Containers and Wrappers. Lodging establishments are prohibited from providing shampoo, hair conditioner, hand soap, bath soap, body washes and shower gels, lotion, and hand sanitizer in a small plastic container with a capacity of less than 6 ounces, a plastic wrapper, or other single-use plastic packaging. Lodging establishments subject to these restrictions include hotels, motels, resorts, inns, timeshares, short-term rentals, and vacation rentals, but do not include hospitals, nursing homes, retirement communities, prisons, jails, homeless shelters, boarding schools, worker housing, or long-term rentals.

Refillable bulk containers are not subject to these restrictions. Lodging establishments may make personal health and beauty products in restricted containers available to a person upon request. These restrictions take effect January 1, 2027, for lodging establishments with 50 or more units, and January 1, 2028, for lodging establishments with less than 50 units.

Ecology may adopt rules to implement, administer, and enforce the requirements. A violation of the requirements is subject to a civil penalty up to \$500 for each day of

violation, and up to a \$2,000 annual limit on penalties issued to a lodging establishment. Penalties may be appealed to the Pollution Control Hearings Board (PCHB). Enforcement must primarily be based on complaints filed with Ecology, and Ecology must establish a complaint-filing forum and a website with education and outreach resources that provides information to lodging establishments and consumers. Ecology must issue at least one notice of violation prior to assessing a penalty.

Expanded or Extruded Foam Overwater Structures, Blocks, and Floats. Beginning January 1, 2024, a person may not sell, distribute, install, or arrange for the installation of overwater structures containing expanded or extruded plastic foam, or of expanded or extruded foam blocks or floats used in overwater structures, unless the foam is fully enclosed and contained in a shell of concrete, aluminum, steel, or .15 inch-thick plastic. Floating homes and floating on-water residences are excluded from these restrictions, but docks, floats, walkways, and other accessory overwater structures associated with floating homes or on-water residences are subject to these restrictions.

Ecology may adopt rules to implement, administer, and enforce these requirements. Persons in violation of these requirements are subject to civil penalties up to \$10,000 per violation, with penalties appealable to the PCHB. Any collected penalties must be deposited in the Model Toxics Control Operating Account.

WDFW must carry out a study and make findings and recommendations to the Legislature by November 1, 2025, related to the durability of air-filled and foam-filled water-based structures other than the foam structures and products that are subject to the restrictions.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We have generated tons of plastic waste since the 1950's. This bill will advance our work to reduce plastic pollution in the environment. We have worked with stakeholders on these requirements to improve the bill throughout the process.

A lot of new construction is already trending in this direction. We are all concerned that these hard encasements can crack and allow plastic foam to pollute our aquatic environment. The small plastic containers are extremely difficult to recycle and are often landfilled. Several hotels are already moving in this direction.

One-time water bottles contribute significantly to the plastic pollution problem. Many

people try to use refillable water bottles, and having these stations is a simple solution to help reduce the amount of single use plastic bottles. The small containers hardly have any product in them anyway, so it only makes sense to utilize the larger refillable containers.

The bill will aid in beach cleanup efforts and help reduce contamination of coastlines and impacts on wildlife. The bottle filling stations help reduce plastic but also help contribute to healthy living by helping people stay hydrated. When the overwater structures break apart they can be ingested by birds and marine animals.

CON: There are still going to be plastic bottles, and they'll still end up in the garbage. This money should be spent toward other policies such as reducing homelessness. We can solve this problem by just saying no more consumer plastics.

Persons Testifying: PRO: Representative Sharlett Mena, Prime Sponsor; Giovanni Severino, Progreso: Latino Progress; Pamela Clough, Environment Washington; Ann Murphy, League of Women Voters of Washington; Peter Steelquist, Surfrider Foundation.

CON: John Worthington, AAMC.

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