

FINAL BILL REPORT

E2SHB 2301

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Synopsis as Enacted

Brief Description: Improving the outcomes associated with waste material management systems, including products affecting organic material management systems.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Doglio, Fitzgibbon, Duerr, Berry, Ramel, Ormsby, Peterson, Pollet, Macri, Cortes, Shavers, Leavitt and Kloba).

House Committee on Environment & Energy
House Committee on Appropriations
Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means

Background:

Solid Waste, Organic Materials, and Food Waste Management.

Under the state's solid waste management laws, local governments are the primary government entity responsible for implementing state solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws. Ecology is responsible for working cooperatively with local governments as they develop their local solid waste management plans. Ecology also evaluates, analyzes, and monitors the state's solid waste stream, and develops a statewide solid waste plan that, in part, addresses organic material wastes.

County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element. This element must include waste reduction strategies, recycling strategies, and source separation strategies.

Since 2019 Washington has had an established goal to reduce the annual generation of food waste by 50 percent by 2030. A subset of the goal includes a prevention goal related to edible food waste. In order to achieve the 2030 food waste reduction goal, Ecology,

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.

working with other state agencies, adopted the Use Food Well Washington plan in December 2021. The Use Food Well Washington plan contained 30 federal and state policy recommendations.

In 2022 the Legislature enacted House Bill 1799 (HB 1799), which established a variety of new requirements related to organic material management. Organic materials are specified to include manure, yard waste, food waste, food processing wastes, wood wastes, and garden waste. Organic materials do not include chemically or biologically contaminated materials that would render the finished product of an organic material management process, such as composting or anaerobic digestion, unsuitable for general public or agricultural use. House Bill 1799 established goals for organic material management (state organics goals), including a goal for the landfill disposal of organic materials at a level in 2030 that is 75 percent less than in 2015, and a goal that at least 20 percent of the volume of edible food disposed of as of 2015 be recovered for human consumption by 2025. The state organics goals are in addition to the food waste reduction goals established in 2019.

Washington Center for Sustainable Food Management.

The Washington Center for Sustainable Food Management (Center) was established as a component of Ecology by HB 1799 with the purpose of helping coordinate statewide food waste reduction. The Center is authorized to perform 13 specified categories of activities, including:

- measuring progress towards state organics goals;
- coordinating implementation of food waste reduction plans;
- maintaining a website with food waste reduction guidance;
- coordinating public-private and nonprofit partnerships, and collaborating with federal, state, and local government partners;
- developing maps or lists of locations of food systems in Washington;
- collecting and maintaining data on food waste and wasted food and measurement methodologies for tracking food donation, food waste, and climate impact data;
- distributing and monitoring grants related to food waste prevention, rescue, and recovery;
- supporting the adoption of local government solid waste ordinances or policies that establish a financial disincentive for organic waste generation and for the disposal of organic materials in landfills; and
- developing food waste reduction and food waste contamination reduction campaigns and promotional materials for destruction.

Ecology may enter into interagency agreements with other state agencies to fulfill the Center's responsibilities. Ecology may adopt rules pertaining to the Center. In order to obtain data to support the Center's goals, Ecology may establish a voluntary reporting protocol for the receipt of information regarding food donations. Ecology may request that a donating business or food recipient provide information regarding the volume, types, and timing of food managed by the donating facility. Ecology must seek to obtain this

information in a manner that is compatible with any similar information reported to the Department of Agriculture (Agriculture), and Agriculture must coordinate with Ecology to ensure that the food donation information receipt practices it implements are consistent with the Center's practices.

Organic Materials Management Requirements for Businesses.

Under HB 1799, beginning July 1, 2023, Ecology must determine which counties and cities preparing solid waste plans provide for businesses to be serviced by providers that collect food waste and organic waste for delivery to solid waste facilities that provide for composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies to manage those collected organic wastes (organic materials management). Ecology must determine that organic material collection service requirements apply to certain businesses within a local jurisdiction unless Ecology determines that businesses in some or all portions of the county have no available organic materials collection services that deliver organic materials for organic materials management, or there is no available capacity at facilities to which organic materials could feasibly and economically be delivered.

In jurisdictions or portions of jurisdictions subject to these organic material collection and management requirements, the requirements are phased-in to apply:

- beginning January 1, 2024, to businesses that generate at least 8 cubic yards of organic waste per week;
- beginning January 1, 2025, to businesses that generate at least 4 cubic yards of organic waste per week; and
- beginning January 1, 2026, to businesses that generate at least 4 cubic yards of solid waste per week. However, Ecology may determine by rule that additional reductions in the landfilling of organic materials would be more effectively achieved at reasonable cost to businesses by establishing a different volumetric threshold than 4 cubic yards per week of solid waste.

Local Government Organic Material Collection and Management Requirements.

Under HB 1799, beginning January 1, 2027, each county or city that implements a local solid waste plan must provide source-separated organic solid waste collection services at least either biweekly or 26 weeks annually to all residents and to nonresidential customers that generate at least 0.25 cubic yards of organic materials per week, and must provide for organic materials management of collected organic materials. Cities and counties may charge and collect fees or rates for these services, consistent with their general authority to impose fees and rates for solid waste collection services. The organic material collection service and management requirements do not apply:

- in counties and cities implementing a solid waste plan that have a population of less than 25,000;
- in counties and cities implementing a solid waste plan that have a population of between 25,000 and 50,000, and that did not offer curbside organic materials

- collection services anywhere in the county as of July 1, 2022;
- in counties and cities implementing a solid waste plan that disposed of less than 5,000 tons of solid waste in the most recent year such data were available;
- in counties not planning under the Growth Management Act (GMA), in portions of a city or county implementing a solid waste plan that have a population density of less than 75 people per square mile and are located in an unincorporated portion of a county;
- in counties planning under the GMA, outside of designated urban growth areas; or
- in counties and cities implementing a solid waste plan that receive a renewable waiver from Ecology applicable to all or part of a jurisdiction. Waivers may be issued for up to five years and based on consideration of the distance to organic materials management facilities, the sufficiency of capacity at local organic materials management facilities to manage additional materials, and pest control restrictions established by Agriculture. Ecology may adopt rules to establish the waiver process and criteria.

Any cities that newly begin implementing an independent solid waste plan after July 1, 2022, must meet organic material collection requirements.

Ecology may adopt a rule beginning January 1, 2030, that applies organic materials collection service and management requirements to jurisdictions exempted from requirements on the basis of population density or an Ecology-issued waiver, but only if Ecology determines that the state goals for the disposal of organic material in landfills for 2030 have not or will not be achieved. When newly developing, updating, or amending solid waste management plans after July 1, 2024, each local solid waste plan must consider the transition to providing organic materials collection services to certain residents and businesses in 2027.

Local Government Compost Procurement Requirements, Plans, and Ordinances.

Under HB 1799, by January 1, 2023, cities and counties with a population of at least 25,000, or in which organic material collection services are provided, must adopt a compost procurement ordinance to implement a requirement that local governments consider the use of compost products in projects and to use compost products in a project except when availability, health, quality, safety, or price-competitive criteria are not met. In developing a compost procurement ordinance, cities and counties must consider four specified categories of compost uses, including landscaping projects and soil amendments. Cities and counties with a compost procurement ordinance must develop strategies to inform residents regarding the jurisdiction's use of compost and the value of compost. Local governments must give priority to purchasing compost products that produce compost locally, are certified by a nationally recognized organization, that produce products derived from municipal solid waste compost programs, and that meet quality standards. Local governments may enter into collective purchasing agreements if cost-effective or efficient to do so. Contracts by governmental units must require the use of compost products to the

maximum extent economically feasible to meet local government compost use requirements. Every two years beginning in 2024, cities and counties with a compost procurement ordinance must submit a report to Ecology.

Local governments may allow for the preferential purchase of compost in order to meet the requirements for local governments to use compost products where products are available, reasonably priced, and meet purchasing and safety standards.

Department of Agriculture Compost Reimbursement Program.

Under HB 1799, Agriculture was required to establish a compost reimbursement program for farming operations in Washington for the purchase and use of compost products that were not generated by the farming operation. Costs covered by the compost reimbursement program include transportation, spreading equipment, and labor, fuel, and maintenance costs associated with spreading equipment. Grant reimbursements under the compost reimbursement program began July 1, 2023. Prior to carrying out activities for which compost reimbursement program reimbursement is sought, farming operations must complete an eligibility review with Agriculture. Agriculture must review proposed transport and application of compost materials for compliance with state pest control rules. Soil sampling by Agriculture must be allowed by compost reimbursement program participants. Compost reimbursement program applicants may not seek reimbursement for purchase or labor costs for its own compost products, from compost products transferred to another individual or entity, or from compost products that were not purchased from a facility with a solid waste handling permit. Farming operations are eligible to receive reimbursement for up to 50 percent of their costs incurred each fiscal year, in an amount up to \$10,000 per fiscal year. Agriculture must submit a report to the Legislature each year.

Waste Not Washington Awards.

Ecology, in consultation with the Office of Superintendent of Public Instruction, administers an awards program to achieve waste reduction and recycling in schools. Awards under the program are capped at \$5,000.

Product Degradability Labeling Requirements.

Since 2019 state law has established a variety of requirements related to how the degradability of plastic or nonplastic products is communicated by labels, tinting, and coloring. Products that are labeled as compostable and sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier, must use green, brown, or beige labeling, color striping, or other marks that help differentiate compostable items from noncompostable materials. Manufacturers or suppliers of food service products and film products, other than film bags, that meet specified ASTM composting standards for plastics or plastic-coated substrates, must ensure that the items are readily and easily identifiable. Readily and easily identifiable film wrap and food service products must be labeled with a

logo indicating the product has met specified ASTM standards, and labeled with the word "compostable," where possible. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks. Specified additional characteristics, such as color and graphic elements, are encouraged for compostable film wrap and food packaging and food service ware.

Food service products and film products, including film bags, that do not meet ASTM standards for composability, are prohibited from using tinting, labeling, and terms that are required of products that meet ASTM standards, and are discouraged from using coloration, labeling, images, and terms that confuse customers into mistakenly identifying noncompostable products as compostable.

Ecology may adopt rules pertaining to product degradability labeling requirements and must begin enforcing requirements by July 1, 2024. Enforcement by Ecology and cities and counties must be based primarily on complaints, and Ecology must establish a forum to receive complaints. Producers of compostable products, including bags, film products, and food service products, must submit at least one compliance declaration to Ecology beginning in 2024 upon a product being sold or distributed into Washington, and again prior to any change in a product's method of compliance with compost labeling requirements.

Ecology, in collaboration with cities and counties, must provide education and outreach to retail establishments, consumers, and suppliers, about product degradability labeling requirements. Ecology-issued penalties are appealable to the Pollution Control Hearings Board (PCHB), and Ecology-issued penalties must be imposed consistent with standard protocols for penalties that are appealable to the PCHB.

Summary:

Funding Programs for Food Waste Prevention Priorities and Organic Materials Management.

The Department of Ecology's (Ecology) Center for Sustainable Food Management (Center) must develop and administer grant programs related to the diversion of organic materials, food waste prevention, and recovery. Specifically, the Center must develop and administer grant programs for:

- projects to prevent the surplus of unsold, uneaten food from food businesses or to standardize food donation operating procedures;
- projects to improve and reduce the transportation of donated foods and cold chain management across the donated food supply chain;
- the establishment and expansion of wasted food reduction programs to benefit vulnerable communities; and
- food waste tracking and analytics pilot project grants.

The Center's Grant programs must be focused on achieving the following priorities:

- maximizing greenhouse gas emission reductions;

- eliminating barriers to edible food rescue;
- development of stable funding programs; and
- managing food in a manner that prioritizes the prevention of wasted food as the highest priority, with food donation, animal feed, and compost or anaerobic digestion as lower priority management options above landfilling or incineration.

For each grant program, eligible applicants and uses of funds are specified. Grants may be awarded on a competitive or noncompetitive basis. Grants must prioritize applications that benefit overburdened communities identified by Ecology consistent with their community engagement plan under the 2021 Healthy Environment for All Act.

In addition to these grant programs, Ecology must develop and administer a grant program to support the implementation of House Bill 1799 of 2022 and the new requirements of this act, with priority to support implementation of organic material collection requirements from businesses and the residential organic material management service requirements applicable in local jurisdictions. Local governments, federally recognized Indian tribes, nonprofit organizations, businesses subject to organic material management collection obligations, and organic material management facilities are all eligible for funding. Ecology may not require a local government to provide matching funds.

The \$5,000 limit on the amount of Waste Not Washington Awards is increased to \$10,000 per award beginning January 1, 2026.

The Department of Agriculture (Agriculture) must implement a new Washington commodities grant program to procure Washington-grown protein, produce, and grains for use in Washington that would otherwise be at risk of ending up as food waste. Specific criteria for the program are prescribed, including relying on existing infrastructure to maximize short-term beneficial impacts, being designed to achieve efficiencies of scale, and providing priority to recipient organizations that have at least five years of experience coordinating similar activities to those required under the grant program. Funds may be used for pick and pack out costs incurred associated with the production of a food product, including food product input and harvest costs and marginal post-harvest logistical and administrative costs.

Organic Material Collection Service and Management Requirements.

The organic material management service requirements applicable to nonresidential customers generating at least 0.25 cubic yards of solid waste and residential customers in jurisdictions implementing a local solid waste plan are amended, including by:

- requiring, beginning in 2027, source-separated organic solid waste collection services to be provided year round except in jurisdictions that do not collect organic materials on a year-round basis as of January 1, 2024, if those jurisdictions provide organic material collection services at least 26 weeks annually;
- exempting multi-family residences from the requirement to manage collected organic

- materials through organic materials management methods such as composting and anaerobic digestion, and from the requirement that local jurisdictions provide organic material management services to single-family residences;
- authorizing Ecology to reduce collection frequency requirements in a jurisdiction for the collection of dehydrated food waste or to address food waste collection circumstances or technologies that reduce the volume or odor of collected food;
 - requiring, beginning in 2030, source-separated organic solid waste collection services to be provided to customers on a nonelective basis unless a customer manages organic material wastes on-site or self-hauls organic material waste;
 - requiring, beginning in 2030, all jurisdictions' source-separated organic solid waste collection services to include the acceptance of food waste, either separate from other organic materials or commingled;
 - requiring, beginning in 2030, all persons other than multifamily residences, when using curbside collection for disposal, to use source-separated organic solid waste collection services when discarding unwanted organic materials, Ecology must develop guidance for exemptions; and
 - amending the geographic and population considerations under which a jurisdiction is exempt from providing organic material management collection service requirements.

Penalties may not be assessed on individuals or residents for the improper disposal of organic materials in a noncommercial or residential setting.

The requirements applicable to the organic material management requirements for businesses are amended, including the following changes:

- beginning in 2026, businesses must arrange for organic material management services if they generate at least 96 gallons per week of organic material waste, rather than 4 cubic yards of solid waste;
- wastes generated as the result of a food safety event due to a foreign material or adverse biological activity that requires landfill destruction are exempt from organic material management requirements;
- Ecology must confirm a local government's determination that a business is not serviced by an organic material management facility with year-round capacity, in order for businesses in the jurisdiction to be exempt from organic material management requirements; and
- businesses are not prohibited from disposing of nonfood organic materials that are not commingled with food waste by using the services of an organic materials management facility that does not accept food waste.

Ecology must adopt or amend solid waste rules establishing permit requirements for organic material management facilities addressing contamination associated with incoming foodwaste feedstocks and finished products, for environmental benefit.

Product Degradability Labeling.

Product degradability labeling laws are amended, including by:

- authorizing products to be labeled as compostable if they have a fiber-based substrate of at least 98 percent fiber by weight, and no plastic or polymer wax additives or coatings;
- authorizing products labeled as compostable to meet three additional specified types of technical specifications, or similar standard specifications determined by Ecology;
- defining the types of tinting of plastic film products that are prohibited, and prohibiting the use of botanical motifs, such as brown, green, or beige vines or leaves, on noncompostable plastic film bags;
- authorizing products to be labeled as "home compostable" if the product meets ASTM industrial composting standards, has been verified by a third-party certifier, and is backed by valid and reproducible scientific evidence to support a claim of home compostability, is labeled in a manner otherwise consistent with labeling requirements for compostable products, and is not labeled as "home compostable only;" and
- specifying protocols for the concurrent enforcement of product degradability labeling requirements in the event that cities and counties choose to enforce labeling requirements, including requiring notification to Ecology.

Compost Procurement.

Agriculture's compost reimbursement program is expanded to allow for the purchase of compost from facilities that are not required to have a solid waste handling permit. Agriculture must prioritize reimbursement for applicants who purchase and use compost containing food waste feedstocks, where it is practicable for the applicant to purchase and use compost containing food waste feedstocks. Compost must meet applicable requirements for compost established by rule by Ecology under solid waste management laws. The \$10,000 per fiscal year limit on compost reimbursement per farming operation is increased to \$20,000 for large farms, and Agriculture must attempt to achieve fair distribution of funding across different farm size categories.

Cities and counties required to adopt compost procurement ordinances and report to Ecology must report annually on March 31, rather than every 2 years on December 31. The report must specify the facility or facilities used for processing organic material, in addition to the tons of organic material diverted.

Other.

Ecology must, in consultation with Agriculture, study and submit to the Legislature a status report on the compostability, performance, printability, and cost of produce sticker technologies by September 1, 2025.

Ecology's Center must convene a work group to address mechanisms to improve the rescue of edible food waste from commercial generators, including food service and retail

establishments. Ecology must select membership of the work group from specified types of state and local government entities and stakeholders. Meetings of the work group must be carried out in a virtual-only format. The work group must consider logistics to phase in edible food donation programs and incentives, food recovery networks, asset gaps and food infrastructure development needs, and lessons learned from other jurisdictions. Ecology must submit a report to the Legislature by September 1, 2025, containing the work group's recommendations, including notation of varied opinions where stakeholder consensus has not been reached.

In implementing the act, including provisions of existing law amended by the act, it is declared to be the Legislature's intent to manage food in a manner that prioritizes the prevention of wasted food as the highest priority, with food donation, animal feed, and compost or anaerobic digestion as lower priority management options above landfilling or incineration.

Severability and null and void clauses are included.

Votes on Final Passage:

House	58	39	
Senate	30	19	(Senate amended)
House	57	36	(House concurred)

Effective: June 6, 2024