

SENATE BILL 5143

State of Washington

52nd Legislature

1991 Regular Session

By Senators Metcalf, Murray and Conner.

Read first time January 22, 1991. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to recycling; amending RCW 43.19.538; adding a new
2 section to chapter 43.78 RCW; adding a new section to chapter 47.28
3 RCW; adding a new section to chapter 19.27 RCW; adding a new section to
4 Title 28A RCW; adding a new chapter to Title 43 RCW; creating new
5 sections; and repealing RCW 43.19.537.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
8 finds that:

9 (a) Washington state citizens have demonstrated enormous support
10 for recycling programs, resulting in a state-wide recycling rate of
11 twenty-eight percent of solid waste generated in 1988, the highest rate
12 in the country.

13 (b) Additional programs for collection of recyclable products will
14 further increase this recycling rate toward Washington's state-wide
15 goal of fifty percent by 1995.

1 (c) The success of Washington's recycling effort cannot be measured
2 by the collection of recyclable materials alone, because the full cycle
3 in recycling requires, in addition to collection, the processing,
4 manufacturing, sale, and eventual use of recycled content products.

5 (d) Unless there is sufficient market demand for recycled
6 products, recycling collection programs will ultimately fail to achieve
7 the objective of diverting large portions of the waste stream from
8 landfills and incinerators.

9 (e) The collection, sorting, processing, and remanufacturing of
10 recyclable materials involves new technologies and management
11 techniques, and is primarily conducted by small businesses that would
12 benefit from technical and other assistance that may be provided by
13 public agencies.

14 (2) It is the purpose of this chapter to:

15 (a) Substantially increase the procurement of recycled content
16 products by all local and state governmental agencies and public
17 schools, providing a model to encourage comparable commitment by
18 Washington state citizens and businesses in their purchasing practices;

19 (b) Target government procurement policies and goals toward those
20 recycled products for which there are significant market development
21 needs or that may substantially contribute to solutions to the state's
22 waste management problem;

23 (c) Provide standards for recycled products for use in procurement
24 programs by all governmental agencies;

25 (d) Provide the necessary authority to all governmental agencies to
26 adopt preferential purchasing policies for recycled products, including
27 price preferences;

28 (e) Direct state agencies to develop strategies to increase
29 recycled product purchases, and to provide specific goals for

1 procurement of recycled paper products and organic recovered materials;
2 and

3 (f) Provide guidance and direction for local governments and other
4 public agencies to develop plans for increasing the procurement of
5 recycled content products.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
7 requires otherwise, the definitions in this section apply throughout
8 this chapter.

9 (1) "Compost" means the biological and manual conversion of waste
10 materials into a humus-like material, or the product derived from such
11 a process.

12 (2) "Construction and demolition waste" means the waste building
13 materials, packaging, and rubble resulting from construction,
14 remodeling, repair, and demolition operations on pavements, houses,
15 commercial buildings, and other structures.

16 (3) "Contractor" means persons or companies contracting with an
17 agency with respect to work performed under such contracts.

18 (4) "Department" means the department of general administration.

19 (5) "Director" means the director of the department of general
20 administration.

21 (6) "Food waste" means the organic residues generated by the
22 handling, storage, sale, preparation, cooking, and serving of foods.

23 (7) "Land clearing debris" means tree stumps, trunks, brush, or
24 other vegetation or plant waste generated solely from the process of
25 clearing land.

26 (8) "Local government" means a city, town, county, special purpose
27 district, or other municipal corporation.

28 (9) "Lubricating oil" means petroleum-based oils for reducing
29 friction in engine parts and other mechanical parts.

1 (10) "Mixed waste paper" means assorted low-value grades of paper
2 that have not been separated into individual grades of paper at the
3 point of collection.

4 (11) "Nonrecyclable" means those materials that are not capable of
5 being recycled and that would otherwise be processed or disposed of as
6 solid waste.

7 (12) "Organic recovered materials" means a product or products
8 made from composting, grinding, screening, or other processing of yard
9 waste, land clearing debris, or other solid waste, where such products
10 are to be used for compost, mulch, erosion control, ground cover, or
11 other landscaping or similar purposes.

12 (13) "Paper and paper products" means all items manufactured from
13 paper or paperboard.

14 (14) "Postconsumer waste" means a material or product that has
15 served its intended use and has been discarded for disposal or recovery
16 after passing through the hands of a final consumer.

17 (15) "Procurement officer" means the person that has the primary
18 responsibility for procurement of materials or products.

19 (16) "Public agency" means all units and subdivisions of state and
20 local government, including divisions of the governor's office, the
21 legislature, the judiciary, state agencies and departments,
22 correctional institutions, port districts, school districts,
23 universities and colleges, cities, counties, and special service
24 districts.

25 (17) "Recyclable" means materials that still have useful physical,
26 chemical, or biological properties after serving their original
27 purposes and can, therefore, be reused or recycled for the same or
28 other purposes.

29 (18) "Recycled content product" or "recycled product" means a
30 product containing recycled materials.

1 (19) "Recycled materials" means waste materials and by-products
2 that have been recovered or diverted from solid waste and that can be
3 utilized in place of a raw or virgin material in manufacturing a
4 product and consists of materials derived from postconsumer waste,
5 manufacturing waste, industrial scrap, agricultural wastes, and other
6 items, all of which can be used in the manufacture of new or recycled
7 products.

8 (20) "Re-refined oils" means used lubricating oils from which the
9 physical and chemical contaminants acquired through previous use have
10 been removed through a refining process. Re-refining may include
11 distillation, hydrotreating, or treatments employing acid, caustic,
12 solvent, clay, or other chemicals, or other physical treatments other
13 than those used in reclaiming.

14 (21) "Manufacturing waste" means waste resulting from a part of a
15 manufacturing process that, unless incorporated as feedstock in product
16 manufacture, must be disposed of as a waste.

17 (22) "Sewage sludge" means a nonhazardous solid, semisolid, or
18 liquid waste generated from a municipal, commercial, institutional or
19 industrial wastewater treatment plant, water supply treatment plant, or
20 air pollution control facility.

21 (23) "USEPA product standards" means the product standards of the
22 United States environmental protection agency for recycled content
23 published in the code of federal regulations.

24 (24) "Yard waste" means vegetative prunings, leaves, grass, or
25 branches generated from residential yards or other landscaped areas.

26 NEW SECTION. **Sec. 3.** STANDARDS FOR RECYCLED CONTENT. (1) The
27 director shall adopt standards that specify the minimum content of
28 recycled materials in products or product categories. The standards
29 shall:

1 (a) Be consistent with the USEPA product standards, unless the
2 director finds that a different standard would significantly increase
3 recycled product availability or competition;

4 (b) Consider the standards of other nearby states, to encourage
5 consistency of manufacturing standards;

6 (c) Consider regional product manufacturing capability;

7 (d) Address specific products or classes of products; and

8 (e) Place primary emphasis upon postconsumer waste content and the
9 future recyclability of the product.

10 (2) The director shall obtain the comments of the supply management
11 board and department of ecology prior to adopting the recycled content
12 standards.

13 (3) The director shall adopt recycled content standards for at
14 least the following products by the dates indicated:

15 (a) By July 1, 1992:

16 (i) Paper and paper products;

17 (ii) Organic recovered materials;

18 (b) By July 1, 1993:

19 (i) Products for lower value uses containing recycled plastics;

20 (ii) Retread and remanufactured tires;

21 (iii) Lubricating oils;

22 (iv) Automotive batteries; and

23 (v) Building insulation.

24 (4) The standards required by this section shall be applied to
25 recycled product purchasing by the department and other state agencies.
26 The standards may be adopted or applied by any other public agency in
27 product procurement. The standards shall provide for exceptions under
28 appropriate circumstances to allow purchases of recycled products that
29 do not meet the minimum content requirements of the standards.

1 NEW SECTION. **Sec. 4.** ELIMINATION OF PURCHASING BARRIERS. On or
2 before January 1, 1993, all public agencies shall review their existing
3 procurement policies and specifications to determine whether recycled
4 products are intentionally or unintentionally excluded. The policies
5 and specifications shall be revised to include such products unless a
6 recycled content product does not meet an established performance
7 standard of the agency. Each public agency shall provide a brief
8 report of its actions to comply with this section by July 1, 1993, to
9 the department pursuant to guidance provided by the department.

10 **Sec. 5.** RCW 43.19.538 and 1988 c 175 s 2 are each amended to read
11 as follows:

12 (1) The director of general administration, through the state
13 purchasing director, shall develop specifications and adopt rules for
14 the purchase of products which will provide for preferential purchase
15 of products containing (~~recovered~~) recycled material by:

16 (a) The use of a weighting factor determined by the amount of
17 (~~recovered~~) recycled material in a product, where appropriate and
18 known in advance to potential bidders, to determine the lowest
19 responsible bidder. The actual dollars bid shall be the contracted
20 amount. If the department determines, according to criteria
21 established by rule that the use of this weighting factor does not
22 encourage the use of more (~~recovered~~) recycled material, the
23 department shall consider and award bids without regard to the
24 weighting factor. In making this determination, the department shall
25 consider but not be limited to such factors as adequate competition,
26 economics or environmental constraints, quality, and availability.

27 (b) Requiring a written statement of the percentage range of
28 (~~recovered material~~) recycled content from the bidder providing

1 products containing (~~recovered material~~) recycled. The range may be
2 stated in fifteen percent increments.

3 (2) The director shall develop a directory of businesses that
4 supply products containing significant quantities of (~~recovered~~)
5 recycled materials. This directory may be combined with and made
6 accessible through the data base of recycled content products to be
7 developed under section 8 of this act.

8 (3) The director shall encourage all parties using the state
9 purchasing office to purchase products containing (~~recovered~~)
10 recycled materials.

11 (4) The rules, specifications, and bid evaluation shall be
12 consistent with recycled content standards adopted under section 3 of
13 this act.

14 NEW SECTION. Sec. 6. (1) All public agencies shall consider the
15 adoption of policies, rules, or ordinances to provide for the
16 preferential purchase of recycled content products. Any public agency
17 may adopt the preferential purchasing policy of the department of
18 general administration, or portions of such policy, or another policy
19 that provides a preference for recycled content products.

20 (2) The department of general administration shall prepare a model
21 recycled content preferential purchase policy suitable for adoption by
22 public agencies, including units of local government and public school
23 districts. The model policy shall be widely distributed and provided
24 through the technical assistance and workshops under section 9 of this
25 act.

26 (3) Each city and county having an operating budget of greater than
27 one million dollars annually, excluding capital expenditures, shall
28 adopt a policy for a price preference in the purchase of recycled
29 content products. The policy may take account of factors such as

1 product availability, performance standards and specifications,
2 budgetary limitations and other appropriate factors. The city or
3 county may, in lieu of such policy, adopt the preferential purchase
4 policy and rules of the department.

5 (4) A public agency that is not subject to the purchasing authority
6 of the department of general administration, and that adopts the
7 preferential purchase policy or rules of the department, shall not be
8 limited by the percentage price preference included in such policy or
9 rules.

10 NEW SECTION. **Sec. 7.** PLANS TO INCREASE RECYCLED PRODUCT
11 PURCHASES. (1) Each public agency shall designate a procurement
12 officer who shall serve as the primary contact with the department for
13 compliance with the requirements of this chapter.

14 (2) Each public agency shall adopt a minimum purchasing goal for
15 the total dollar value of its materials and supplies as recycled
16 products by 1995.

17 (3) The department shall prepare a consolidated state plan to
18 increase purchases of recycled products by the department and other
19 state agencies, including higher education institutions, and including
20 purchases as a part of public works contracts and personal services
21 contracts. The plan shall adopt goals for the purchase of plastic
22 products, retread and remanufactured tires, motor vehicle lubricants,
23 and lead acid batteries having recycled content. The plan shall
24 incorporate actions to achieve the following specific goals for the
25 purchase of recycled content paper products and organic recovered
26 materials:

27 (a) Paper products as a percentage of the total dollar amount
28 purchased on an annual basis:

29 (i) At least forty percent by 1993;

1 (ii) At least fifty percent by 1994;

2 (iii) At least sixty percent by 1995.

3 (b) Organic recovered materials as a percentage of the total dollar
4 amount on an annual basis:

5 (i) At least twenty-five percent by 1993;

6 (ii) At least forty percent by 1995;

7 (iii) At least sixty percent by 1997.

8 (4) Each public agency having an annual operating budget greater
9 than one million dollars, excluding capital expenditures, shall adopt
10 a strategy by January 1, 1993, to increase the purchase of recycled
11 products and to meet the goal adopted by the agency under subsection
12 (2) of this section. A description of the strategy shall be submitted
13 to the department. The department shall report to the legislature by
14 October 1, 1993, on the progress of strategy adoption and
15 implementation by public agencies, and shall thereafter periodically
16 report on the progress of recycled product purchasing by state and
17 other public agencies. All public agencies shall respond to requests
18 for information from the department for the purpose of its reporting
19 requirements under this section.

20 NEW SECTION. Sec. 8. DATA BASE. (1) The department shall develop
21 a data base of available products with recycled materials, and vendors
22 who carry the products. The data base shall incorporate information
23 regarding product consistency with the content standards adopted under
24 section 3 of this act, and information regarding the origin of
25 postconsumer waste used in the product. The department shall
26 incorporate information developed through public agency procurement of
27 recycled products.

28 (2) The data base shall be fully available for use by the
29 department from its initiation, and used by the department for its

1 procurement activities. The department shall report to the 1993
2 legislature on the cost and means of making the data base fully
3 accessible by all public agencies and the private sector.

4 (3) The department shall compile records of purchases by the
5 department or pursuant to department authorities, and information
6 provided by other public agencies, regarding:

7 (a) The percentage of postconsumer waste in the products purchased;

8 (b) Comparative price information;

9 (c) The quantity procured over a fiscal year;

10 (d) The availability of products and product pricing;

11 (e) The type of performance tests conducted and the nature of test
12 failures; and

13 (f) Agency experience with the performance of procured products.

14 NEW SECTION. **Sec. 9.** PUBLIC AGENCY PROCUREMENT EDUCATION PROGRAM.

15 (1) The department shall implement an education program to encourage
16 maximum procurement of recycled products by public agencies. The
17 program shall include at least the following:

18 (a) Providing technical assistance to all public agencies and their
19 designated procurement officers on the requirements of this chapter,
20 including preparation of model purchase contracts, the preparation of
21 procurement plans, and the availability of recycled products;

22 (b) Conducting at least two workshops annually to which all public
23 agencies are invited;

24 (c) Encouraging intergovernmental agreements to facilitate
25 procurement of recycled products.

26 (2) The director shall, in consultation with the department of
27 ecology:

1 (a) Develop a list of materials, products, and equipment for which
2 suitable substitutes are available that are superior in regard to life
3 cycle and environmental costs as defined by RCW 43.19.1911;

4 (b) Make available to the public, local jurisdictions, and the
5 private sector, a comprehensive list of substitutes for extremely
6 hazardous, hazardous, toxic, and nonrecyclable products, and disposable
7 products intended for a single use. The department and all state
8 agencies exercising the purchasing authorities of the department shall
9 include the substitute products on bid specifications, except where the
10 department allows an exception based upon product availability, price,
11 suitability for intended use, or similar reasons.

12 (3) The department shall prepare model procurement guidelines for
13 use by units of local government.

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.78 RCW
15 to read as follows:

16 PUBLIC PRINTER. The public printer shall maximize the purchase of
17 paper stock with recycled content and shall grant the price preference
18 authorized by section 5 of this act if necessary. In addition to the
19 goals established by section 7 of this act, the public printer shall
20 ensure that seventy-five percent or more of the total dollar amount of
21 printing paper stock used by the printer is recycled content paper by
22 January 1, 1995.

23 NEW SECTION. **Sec. 11.** BID NOTIFICATION. A notation regarding a
24 public agency's intent to procure products with recycled content must
25 be prominently displayed in the procurement solicitation or invitation
26 to bid including:

27 (1) A statement in each product specification describing the
28 postconsumer waste content or recycled content preferred; and

1 (2) A statement describing the agency's preference program.

2 NEW SECTION. **Sec. 12.** **VENDOR CERTIFICATION.** (1) After July 1,
3 1992, vendors shall certify the recycled material content of products
4 sold to public agencies, specifically identifying the percentage of
5 postconsumer waste and other recycled material that is in the product.
6 The certification shall be in the form of a label on the product or a
7 statement by the vendor attached to the bid documents.

8 (2) The certification on multicomponent or multimaterial products
9 shall verify the percentage and type of postconsumer waste and recycled
10 content by volume contained in the major constituents of the product.

11 (3) The procuring agency may state in bid solicitations that
12 permission to verify the certification by review of the bidder or
13 manufacturer's records must be granted as a condition of the bid award,
14 in the event of a bidder's protest or other challenge to the bid
15 accepted.

16 (4) The department shall adopt rules by May 1, 1992, describing the
17 contents of the certification required by this section.

18 NEW SECTION. **Sec. 13.** **PROCUREMENT OF ORGANIC RECOVERED MATERIALS.**

19 (1) The department shall increase the procurement of organic recovered
20 materials for all state facilities and grounds that require landscaping
21 or similar work. The department shall survey available vendors and
22 state facilities for which such products are suitable, and attempt to
23 match such supplies and need to lower transportation and other costs.
24 The department shall consider and implement modification of performance
25 standards where appropriate to achieve greater procurement of organic
26 recovered materials.

27 (2) Beginning July 1, 1992, the total of department contracts
28 awarded in whole or in part for the purpose of applying landscaping

1 materials shall include organic recovered materials meeting the
2 following schedule:

3 (a) For the period July 1, 1992, through June 30, 1994, twenty-five
4 percent of the total dollar amount of purchases of such landscaping
5 materials;

6 (b) On and after July 1, 1994, fifty percent of the total dollar
7 amount of purchases of such landscaping materials.

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.28 RCW
9 to read as follows:

10 ORGANIC RECOVERED MATERIALS IN TRANSPORTATION PROJECTS. (1) A
11 contract awarded in whole or in part for the purpose of applying
12 landscaping materials as a soil cover or soil amendment to state
13 highway rights of way shall specify that compost products be purchased
14 in accordance with the following schedule:

15 (a) For the period July 1, 1991, through June 30, 1993, twenty-five
16 percent of the total dollar amount purchased;

17 (b) For the period July 1, 1993, through June 30, 1995, fifty
18 percent of the total dollar amount purchased. The percentages in this
19 subsection apply only to the materials' value, and do not include
20 services or other materials.

21 (2) In order to carry out the provisions of this section, the
22 department of transportation shall develop and adopt bid specifications
23 for compost products used in state highway construction projects.

24 NEW SECTION. **Sec. 15.** SEWAGE SLUDGE TASK FORCE. (1) There is
25 hereby created a sewage sludge task force. The purpose of the task
26 force shall be to investigate the increased application of municipal
27 sewage sludge on selected state-owned intensive forestry management
28 sites and grazing lands, and upon state highway rights of way.

1 (2) The task force shall be composed of representatives of the
2 departments of natural resources, ecology, health, transportation, the
3 municipality of metropolitan Seattle, local governments, and the
4 general public.

5 (3) The task force shall prepare and submit a report to the 1992
6 legislature that includes, but is not limited to:

7 (a) Identifying potential forestry management sites for sludge
8 application;

9 (b) Assessing the feasibility of sludge application upon state
10 highway rights of way as a significant method of sludge utilization;

11 (c) Assessing the costs and benefits associated with different site
12 applications; and

13 (d) Any significant human health or environmental risks associated
14 with the site applications.

15 (4) The director of the department of ecology shall chair the task
16 force, and shall appoint the local government representatives and
17 public members. The department of ecology shall provide necessary
18 staff support to the task force.

19 (5) A report of the task force findings and recommendations shall
20 be submitted to the governor and the legislature no later than April 1,
21 1992.

22 (6) This section shall expire April 1, 1992.

23 NEW SECTION. **Sec. 16.** A new section is added to chapter 19.27 RCW
24 to read as follows:

25 STATE BUILDING CODE STUDY. The state building code council, in
26 consultation with the department of ecology and local governments,
27 shall conduct a study of the state building code, and adopt changes
28 necessary to encourage greater use of recycled building materials from

1 construction and building demolition debris, mixed waste paper, and
2 waste plastics.

3 NEW SECTION. **Sec. 17.** USE OF RECYCLED MATERIALS IN ROAD
4 CONSTRUCTION. The department of transportation shall prepare and
5 forward to the legislature on or before January 1, 1992, a study of the
6 use of recycled materials for public highways, roads, bicycle routes,
7 trails, and paths. The study shall include, but not be limited to:

8 (1) An analysis of the types of recycled materials appropriate and
9 feasible as alternative paving material such as glass, tires, or
10 incinerator ash;

11 (2) An analysis of waste tire rubber uses including, but not
12 limited to, erosion control mats, highway stabilization mats, ferry
13 bumpers, highway crash attenuation barriers, road subbase materials, or
14 backfill;

15 (3) An analysis of using recycled mixed-plastic materials for guard
16 rail posts, right of way fence posts, and sign supports;

17 (4) Strategies to test and monitor the use of recycled content
18 materials in road construction;

19 (5) The development of materials specifications;

20 (6) Plans or proposals for pilot programs or demonstration projects
21 using recycled materials; and

22 (7) Identification of recycled material sources and vendors to
23 ensure competitive product pricing and material availability over the
24 long term.

25 NEW SECTION. **Sec. 18.** ORGANIC RECOVERED MATERIALS IN LOCAL ROAD
26 PROJECTS. (1) Each county and city required to prepare a strategy
27 under section 7 of this act shall adopt specifications for compost
28 products to be used in road projects. The specifications developed by

1 the department of transportation under section 14 of this act may be
2 adopted by the city or county in lieu of developing specifications.

3 (2) Beginning July 1, 1992, any contract awarded in whole or in
4 part for applying soils, soil covers, or soil amendments to road rights
5 of way shall specify that organic recovered materials be purchased in
6 accordance with the following schedule:

7 (a) For the period July 1, 1992, through June 30, 1994, at least
8 twenty-five percent of the total dollar amount of purchases by the city
9 or county;

10 (b) On and after July 1, 1994, at least fifty percent of the total
11 dollar amount of purchases by the city or county.

12 (3) The city or county may depart from the schedule in subsection
13 (2) of this section where it determines that no suitable product is
14 available at a reasonable price.

15 NEW SECTION. **Sec. 19.** A new section is added to Title 28A RCW to
16 read as follows:

17 Every school board of directors shall consider the purchase of
18 playground matting manufactured from shredded waste tires in
19 undertaking construction or maintenance of playgrounds. The department
20 of general administration shall upon request assist in the development
21 of product specifications and vendor identification.

22 NEW SECTION. **Sec. 20.** RCW 43.19.537 and 1988 c 175 s 1 & 1982 c
23 61 s 1 are each repealed.

24 NEW SECTION. **Sec. 21.** CODIFICATION. Sections 1 through 4, 7
25 through 9, 11 through 13, 15, 17, and 18 of this act shall constitute
26 a new chapter in Title 43 RCW.

1 NEW SECTION. **Sec. 22.** CAPTIONS NOT LAW. Captions as used in this
2 act constitute no part of the law.