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**SUBSTITUTE SENATE BILL 5788**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Water, Energy & Environment (originally sponsored by Senators Doumit, Kastama, Mulliken, Haugen, Morton, Poulsen, Pridemore and Berkey)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to ensuring the lawful transport and handling of  
2 recyclable materials; amending RCW 70.95.305; reenacting and amending  
3 RCW 70.95.020; adding new sections to chapter 70.95 RCW; creating a new  
4 section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
7 improve recycling, eliminate illegal disposal of recyclable materials,  
8 protect consumers from sham recycling, and to further the purposes of  
9 RCW 70.95.020 and the goal of consistency in jurisdictional treatment  
10 of the statewide solid waste management plan adopted by the department  
11 of ecology.

12 **Sec. 2.** RCW 70.95.020 and 1998 c 156 s 1 and 1998 c 90 s 1 are  
13 each reenacted and amended to read as follows:

14 The purpose of this chapter is to establish a comprehensive  
15 statewide program for solid waste handling, and solid waste recovery  
16 and/or recycling which will prevent land, air, and water pollution and  
17 conserve the natural, economic, and energy resources of this state. To  
18 this end it is the purpose of this chapter:

1 (1) To assign primary responsibility for adequate solid waste  
2 handling to local government, reserving to the state, however, those  
3 functions necessary to assure effective programs throughout the state;

4 (2) To provide for adequate planning for solid waste handling by  
5 local government;

6 (3) To provide for the adoption and enforcement of basic minimum  
7 performance standards for solid waste handling, including that all  
8 sites where recyclable materials are generated and transported from  
9 shall provide a separate container for solid waste;

10 (4) To encourage the development and operation of waste recycling  
11 facilities needed to accomplish the management priority of waste  
12 recycling, (~~and~~) to promote consistency in the requirements for such  
13 facilities throughout the state, and to ensure that recyclable  
14 materials diverted from the waste stream for recycling are routed to  
15 facilities in which recycling occurs;

16 (5) To provide technical and financial assistance to local  
17 governments in the planning, development, and conduct of solid waste  
18 handling programs;

19 (6) To encourage storage, proper disposal, and recycling of  
20 discarded vehicle tires and to stimulate private recycling programs  
21 throughout the state; and

22 (7) To encourage the development and operation of waste recycling  
23 facilities and activities needed to accomplish the management priority  
24 of waste recycling and to promote consistency in the permitting  
25 requirements for such facilities and activities throughout the state.

26 It is the intent of the legislature that local governments be  
27 encouraged to use the expertise of private industry and to contract  
28 with private industry to the fullest extent possible to carry out solid  
29 waste recovery and/or recycling programs.

30 **Sec. 3.** RCW 70.95.305 and 1998 c 156 s 5 are each amended to read  
31 as follows:

32 (1) Notwithstanding any other provision of this chapter, the  
33 department may by rule exempt from the requirements to obtain a solid  
34 waste handling permit any category of solid waste handling facility  
35 that it determines to:

36 (a) Present little or no environmental risk; and

1 (b) Meet the environmental protection and performance requirements  
2 required for other similar solid waste facilities.

3 (2) This section does not apply to any facility or category of  
4 facilities that:

5 (a) Receives municipal solid waste destined for final disposal,  
6 including but not limited to transfer stations, landfills, and  
7 incinerators;

8 (b) Applies putrescible solid waste on land for final disposal  
9 purposes;

10 (c) Handles mixed solid wastes that have not been processed to  
11 segregate solid waste materials destined for disposal from other solid  
12 waste materials destined for a beneficial use or recycling;

13 (d) Receives or processes organic waste materials into compost in  
14 volumes that generally far exceed those handled by municipal park  
15 departments, master gardening programs, and households; or

16 (e) Receives solid waste destined for recycling or reuse, the  
17 operation of which is determined by the department to present risks to  
18 human health and the environment.

19 (3) Rules adopted under this section shall contain such terms and  
20 conditions as the department deems necessary to ensure compliance with  
21 applicable statutes and rules. If a facility does not operate in  
22 compliance with the terms and conditions established for an exemption  
23 under subsection (1) of this section, the facility is subject to the  
24 permitting requirements for solid waste handling under this chapter.

25 (4) This section shall not be deemed to invalidate the exemptions  
26 or determinations of nonapplicability in the department's solid waste  
27 rules as they exist on June 11, 1998, which exemptions and  
28 determinations are recognized and confirmed subject to the department's  
29 continuing authority to modify or revoke those exemptions or  
30 determinations by rule.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.95 RCW  
32 to read as follows:

33 (1) For the purposes of this section and section 5 of this act,  
34 "transporter" means any person or entity that transports recyclable  
35 materials from commercial or industrial generators over the public  
36 highways of the state of Washington for compensation, and who are  
37 required to possess a permit to operate from the Washington utilities

1 and transportation commission under chapter 81.80 RCW. "Transporter"  
2 includes commercial recycling operations of certificated solid waste  
3 collection companies as provided in chapter 81.77 RCW. "Transporter"  
4 does not include:

5 (a) Carriers of commercial recyclable materials, when such  
6 materials are owned or being bought or sold by the entity or person,  
7 and being carried in their own vehicle, when such activity is  
8 incidental to the conduct of an entity or person's primary business;

9 (b) Entities or persons hauling their own recyclables or hauling  
10 recyclables they generated or purchased and transported in their own  
11 vehicles;

12 (c) Nonprofit or charitable organizations collecting and  
13 transporting recyclable materials from a buyback center, drop box, or  
14 from a commercial or industrial generator of recyclable materials;

15 (d) City municipal solid waste departments or city solid waste  
16 contractors; or

17 (e) Common carriers under chapter 81.80 RCW whose primary business  
18 is not the transportation of recyclable materials.

19 (2) All transporters shall register with the department prior to  
20 the transportation of recyclable materials. The department shall  
21 supply forms for registration.

22 (3) A transporter who transports recyclable materials within the  
23 state without a transporter registration required by this section is  
24 subject to a civil penalty in an amount up to one thousand dollars per  
25 violation.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.95 RCW  
27 to read as follows:

28 (1) A transporter may not deliver any recyclable materials to a  
29 transfer station or landfill for disposal.

30 (2) A transporter shall keep records of locations and quantities  
31 specifically identified in relation to a generator's name, service  
32 date, address, and invoice, documenting where recyclables have been  
33 sold, delivered for processing, or otherwise marketed. These records  
34 must be retained for two years from the date of collection, and must be  
35 made accessible for inspection by the department and the local health  
36 department.

1 (3) A transporter who violates the provisions of this section is  
2 subject to a civil penalty of up to one thousand dollars per violation.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.95 RCW  
4 to read as follows:

5 Any person damaged by a violation of sections 4 through 8 of this  
6 act may bring a civil action for such a violation by seeking either  
7 injunctive relief or damages, or both, in the superior court of the  
8 county in which the violation took place or in Thurston county. The  
9 prevailing party in such an action is entitled to reasonable costs and  
10 attorneys' fees, including those on appeal.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.95 RCW  
12 to read as follows:

13 (1) All facilities that recycle solid waste, except for those  
14 facilities with a current solid waste handling permit issued under RCW  
15 70.95.170, must notify the department and jurisdictional health  
16 department in writing within thirty days prior to operation, or ninety  
17 days from the effective date of this section for existing recycling  
18 operations, of the intent to conduct recycling in accordance with this  
19 section. Notification must be in writing, and include:

20 (a) Contact information for the person conducting the recycling  
21 activity;

22 (b) A general description of the recycling activity;

23 (c) A description of the types of solid waste being recycled; and

24 (d) A general explanation of the recycling processes and methods.

25 (2) Each facility that recycles solid waste, except those  
26 facilities with a current solid waste handling permit issued under RCW  
27 70.95.170, shall prepare and submit an annual report to the department  
28 and the jurisdictional health department by April 1st on forms supplied  
29 by the department. The annual report must detail recycling activities  
30 during the previous calendar year and include the following  
31 information:

32 (a) The name and address of the recycling operation;

33 (b) The calendar year covered by the report;

34 (c) The annual quantities and types of waste received, recycled,  
35 and disposed, in tons, for purposes of determining progress towards

1 achieving the goals of waste reduction, waste recycling, and treatment  
2 in accordance with RCW 70.95.010(4); and

3 (d) Any additional information required by written notification of  
4 the department.

5 (3) Any facility, except for product take-back centers, that  
6 recycles solid waste materials within the state without first obtaining  
7 a solid waste handling permit under RCW 70.95.170 or completing a  
8 notification under this section is subject to a civil penalty of up to  
9 one thousand dollars per violation.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.95 RCW  
11 to read as follows:

12 (1) The department may adopt rules that establish financial  
13 assurance requirements for recycling facilities that do not already  
14 have financial assurance requirements under this chapter, or are not  
15 already specifically exempted from financial assurance requirements  
16 under this chapter. The financial assurance requirements must take  
17 into consideration the amounts and types of recyclable materials  
18 recycled at the facility, and the potential closure and postclosure  
19 costs associated with the recycling facility; which assurance may  
20 consist of posting of a surety bond in an amount sufficient to meet  
21 these requirements or other financial instrument, but in no case less  
22 than ten thousand dollars.

23 (2) A recycling facility is required to meet financial assurance  
24 requirements adopted by the department by rule, unless the facility is  
25 already required to provide financial assurance under other provisions  
26 of this chapter.

27 NEW SECTION. **Sec. 9.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

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