
SENATE BILL 5110

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kohl-Welles, Chase, Rockefeller, Kline, Ranker, Shin, Nelson, Fraser, and White

Read first time 01/13/11. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to carpet stewardship; reenacting and amending RCW
2 43.21B.110 and 43.21B.110; adding a new chapter to Title 70 RCW;
3 prescribing penalties; providing an effective date; and providing an
4 expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) In 2009, discarded carpet equaled 2.9 percent of Washington's
8 disposed waste by weight. The estimated recycling rate for carpet and
9 padding in Washington was less than two percent in 2009.

10 (2) The national, voluntary, and industry-led approach to carpet
11 stewardship, the 2002 memorandum of understanding for carpet
12 stewardship, has not met its agreed-upon goal of forty percent carpet
13 recovery and has only achieved a four to five percent recovery rate
14 nationwide.

15 (3) Numerous products can be manufactured from recycled carpet,
16 including carpet backing and backing components, carpet fiber, carpet
17 underlayment, plastics and engineered materials, and erosion control
18 products.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Brand" means a name, symbol, word, or mark that identifies the
4 carpet, rather than its components, and attributes the carpet to the
5 owner or licensee of the brand as the manufacturer.

6 (2) "Carpet" means a manufactured article that is used in
7 commercial or residential buildings affixed or placed on the floor or
8 building walking surface as a decorative or functional building
9 interior or exterior feature and that is primarily constructed of a top
10 visible surface of synthetic face fibers or yarns or tufts attached to
11 a backing system derived from synthetic or natural materials. "Carpet"
12 includes, but is not limited to, a commercial or a residential
13 broadloom carpet or modular carpet tiles. "Carpet" includes a pad or
14 underlayment used in conjunction with a carpet. "Carpet" does not
15 include handmade rugs, area rugs, or mats.

16 (3) "Carpet stewardship organization" or "organization" means
17 either of the following:

18 (a) An organization appointed by one or more producers to act as an
19 agent on behalf of the producer to design, submit, and administer a
20 product stewardship program under this chapter; or

21 (b) A carpet producer that complies with this chapter as an
22 individual producer.

23 (4) "Consumer" means a purchaser, owner, or lessee of carpet,
24 including a person, business, corporation, limited partnership,
25 nonprofit organization, or governmental entity.

26 (5) "Department" means the department of ecology.

27 (6) "Discarded carpet" means carpet that is no longer used for its
28 manufactured purpose. However, the term does not include carpet scrap
29 generated during carpet production.

30 (7) "Producer" means:

31 (a) The person who manufactures the carpet and who sells, offers
32 for sale, or distributes that carpet in the state under that person's
33 own name or brand;

34 (b) If there is no person who sells, offers for sale, or
35 distributes the carpet in the state under the person's own name or
36 brand, the producer of the carpet is the owner or licensee of a
37 trademark or brand under which the carpet is sold or distributed in the
38 state, whether or not the trademark is registered; and

1 (c) If there is no person who is a producer of the carpet, the
2 producer of that carpet is the person who imports the carpet into the
3 state for sale or distribution.

4 (8) "Product stewardship program" or "program" means the methods,
5 systems, and services financed and provided by producers of carpet sold
6 in the state including collecting, transporting, processing, and
7 recycling of discarded carpet necessary to implement the program.

8 (9) "Product stewardship program plan" or "plan" means a detailed
9 plan describing the manner in which a product stewardship program will
10 be implemented.

11 (10) "Recycling" means transforming or remanufacturing waste
12 materials into a finished product for use other than landfill disposal
13 or incineration.

14 (11) "Reporting period" means the period commencing January 1st and
15 ending December 31st in the same calendar year.

16 (12) "Retailer" means every person who purchases, sells, offers for
17 sale, or distributes new carpet for sale in this state.

18 (13) "Sell" or "sales" means a transfer of title of a carpet for
19 consideration, including a remote sale conducted through a sales
20 outlet, catalog, internet web site, or similar electronic means. For
21 purposes of this chapter, "sell" or "sales" includes a lease through
22 which a carpet is provided to a consumer by a producer, wholesaler, or
23 retailer.

24 (14) "Wholesaler" means every person who purchases, sells, or
25 distributes new carpet in this state in a sale that is not a retail
26 sale, and in which the carpet is intended to be resold.

27 NEW SECTION. **Sec. 3.** (1) By January 1, 2013, carpet stewardship
28 organizations must submit to the department sales data from the years
29 2002 through 2012 that includes the amount of carpet sold by square
30 yards and weight in the state. The department shall use the sales data
31 to set carpet recycling rates.

32 (2)(a) By January 1, 2014, a producer of carpet sold in this state
33 or brought into the state by other means shall participate in a carpet
34 stewardship organization.

35 (b) A carpet stewardship organization shall submit to the
36 department a product stewardship program plan that is consistent with

1 the requirements of this section by March 1, 2014. A carpet
2 stewardship organization with a department-approved product stewardship
3 program must implement their program by July 1, 2014.

4 (3) A product stewardship program must:

5 (a) Have in place methods and systems for financing the program and
6 collecting, transporting, processing, and recycling discarded carpet;

7 (b) Be provided at no cost to carpet installers throughout the
8 state. The program may not charge a fee at the time discarded carpet
9 is collected;

10 (c) Include five-year performance goals and set interim milestones
11 to:

12 (i) Increase the recycling of discarded carpet throughout the
13 state;

14 (ii) Increase the recyclability of carpets; and

15 (iii) Incentivize the market growth of secondary products made from
16 discarded carpet;

17 (d) Describe how discarded carpet will be collected throughout the
18 state and describe proposed measures that will enable the management of
19 discarded carpet in a manner consistent with the state's solid waste
20 management program including, but not limited to, source reduction,
21 source separation and processing to segregate and recover recyclable
22 materials, and environmentally safe management of materials that cannot
23 feasibly be recycled;

24 (e) Identify each producer participating in the product stewardship
25 program and provide contact information for each producer and the
26 brands covered by each producer;

27 (f) Include a funding mechanism that provides sufficient funding
28 for the product stewardship program, including: Education and outreach
29 efforts; administrative and operational activities; capital costs of
30 the program; and other efforts that will advance the purposes of this
31 chapter;

32 (g) Include a proposal for achieving and maintaining performance
33 standards, beyond the five-year period described in (c) of this
34 subsection, consistent with performance goals established by rule under
35 section 4 of this act;

36 (h) Provide opportunities for public comment on the product
37 stewardship program, a summary of comments received, and responses to
38 those comments both prior to its submittal and annually thereafter; and

1 (i) Include education and outreach efforts to consumers, commercial
2 building owners, carpet installation contractors, and retailers
3 throughout the state to promote their participation in achieving the
4 product stewardship program's performance goals. At a minimum, the
5 education and outreach efforts must include:

6 (i) Signage that is prominently displayed and easily visible to the
7 consumer;

8 (ii) Written materials and templates of materials for reproduction
9 to be provided to retailers, local governments, carpet installation
10 contractors, and consumers at the time of purchase and delivery. The
11 product stewardship program must provide the templates and materials
12 free of charge.

13 (4) The carpet stewardship organization administering a product
14 stewardship program shall notify the department within thirty days
15 after instituting a significant or material change to an approved
16 product stewardship program.

17 NEW SECTION. **Sec. 4.** (1) The department shall adopt rules
18 necessary to implement, administer, and enforce this chapter. Rules
19 adopted by the department must include the required components of a
20 product stewardship program, including but not limited to:

21 (a) The management and organization of the product stewardship
22 program that will oversee collecting, transporting, processing, and
23 recycling services;

24 (b) A description of how the public will be informed about the
25 product stewardship program;

26 (c) A public review and comment process; and

27 (d) Any other information deemed necessary by the department to
28 ensure an effective product stewardship program that is in compliance
29 with all applicable laws and rules.

30 (2) The rules must establish standards for product stewardship
31 programs' performance goals under section 3(3) of this act, and for
32 demonstrating substantial achievement of the goals of the program as
33 required by section 6 of this act. The standards, at a minimum, must
34 be guided by national standards developed collaboratively by carpet
35 producers and product stewardship advocacy organizations.

36 (3) The department or its designee may inspect or review audits of

1 carpet stewardship organizations or of carpet processing and recycling
2 facilities used to fulfill the requirements of a product stewardship
3 program.

4 NEW SECTION. **Sec. 5.** (1) Within sixty days after receiving a
5 product stewardship program for approval, the department shall review
6 the program, determine whether the program complies with the
7 requirements of this chapter, and notify the carpet stewardship
8 organization of its decision to approve or not approve the program.

9 (2) A product stewardship program may not be approved if the
10 department determines that the program will have the effect of reducing
11 the level of recycling of discarded carpet that has been achieved since
12 the effective date of this section or if the product stewardship
13 program does not meet program elements as required in section 3 of this
14 act.

15 (3) The department shall describe the reasons for its decision to
16 not approve a product stewardship program in the notice to a carpet
17 stewardship organization. The carpet stewardship organization shall
18 revise and resubmit the product stewardship program within sixty days
19 after receiving notice that the program was not approved. The
20 department shall review and approve or not approve the revised product
21 stewardship program within sixty days after receipt.

22 (4) On and after July 1, 2014, a product stewardship program not
23 approved by the department is not in compliance with this chapter. The
24 department must list any producer relying on such a product stewardship
25 program as noncompliant with the requirements of this chapter.

26 (5) The department must make all approved product stewardship
27 programs and annual reports available for public review on the
28 department's web site and at the department's headquarters. By July 1,
29 2014, and no later than July 1st annually thereafter, the department
30 shall post a notice on its web site listing producers that are and are
31 not in compliance with this chapter.

32 (6) The decision of the department to approve or to not approve a
33 product stewardship program under this section is appealable to the
34 pollution control hearings board as provided in RCW 43.21B.130.

35 NEW SECTION. **Sec. 6.** (1) Beginning July 1, 2015, and each year

1 thereafter, a carpet stewardship organization must submit to the
2 department an annual report describing its activities to achieve the
3 purposes of this chapter.

4 (2) The report must demonstrate that the carpet stewardship
5 organization's product stewardship program has met the performance
6 goals of the program including achieving continuous meaningful
7 improvement in the rate of recycling discarded carpet subject to the
8 program. Further, the report must include all of the following:

9 (a) A description of how the product stewardship program has
10 implemented all of its required elements, including collecting,
11 transporting, processing, and recycling activities and how the program
12 has been implemented throughout the state;

13 (b) The amount of carpet sold in the state, by square yards and
14 weight, during the reporting period;

15 (c) The amount of discarded carpet recycled, by weight, during the
16 reporting period;

17 (d) The names and locations of carpet processing and recycling
18 facilities used by the product stewardship program and recycled end
19 uses of collected carpet by weight, during the reporting period;

20 (e) The amount of discarded carpet recovered but not recycled, by
21 weight, and its ultimate disposition;

22 (f) The total cost of implementing the product stewardship program;

23 (g) An evaluation of the effectiveness of the product stewardship
24 program, and anticipated steps, if needed, to improve performance
25 throughout the state;

26 (h) Examples of educational materials that were provided to
27 consumers, commercial building owners, carpet installation contractors,
28 and retailers during the reporting period and a summary of outreach
29 efforts, including timeline and frequency; and

30 (i) A summary of public comments received regarding the product
31 stewardship program and response to those comments.

32 NEW SECTION. **Sec. 7.** (1) Beginning January 1, 2014, a producer
33 that offers carpet for sale in this state, but is not participating in
34 a product stewardship program, is not in compliance with this chapter.

35 (2) No producer may sell or offer for sale carpet in or into the
36 state unless the producer of the carpet is participating in an approved
37 product stewardship program. The department shall send a written

1 warning to a producer that is not participating in an approved program.
2 The written warning must inform the producer that it must participate
3 in an approved program within thirty days of the notice.

4 (3) A producer that is not listed on the department's internet web
5 site as required in section 5(5) of this act, but demonstrates to the
6 satisfaction of the department that the producer is in compliance with
7 this chapter before the next notice is required to be posted, may
8 request a certification letter from the department stating that the
9 producer is in compliance with this chapter. The letter constitutes
10 proof of compliance with this chapter.

11 (4) A wholesaler or retailer that distributes or sells carpet shall
12 monitor the department's web site to determine if the sale of a
13 producer's carpet is in compliance with the requirements of this
14 chapter. A wholesaler or retailer otherwise in compliance with this
15 chapter is deemed in compliance with this section if, on the date the
16 wholesaler or retailer ordered or purchased carpet, the producer was
17 listed as a compliant producer on the department's internet web site.

18 (5) The department may assess an administrative civil penalty of up
19 to one thousand dollars for each day of noncompliance with the
20 requirements of this chapter. The penalty must be assessed as provided
21 in RCW 43.21B.300.

22 NEW SECTION. **Sec. 8.** The department shall establish a fee
23 sufficient to cover the direct costs of administering and enforcing
24 product stewardship programs under this chapter. The total amount of
25 annual fees collected must not exceed the amount necessary to recover
26 costs incurred by the department in connection with the administration,
27 oversight, and enforcement of the requirements of this chapter. The
28 fee must be collected from carpet stewardship organizations submitting
29 programs and reports to the department. Any unspent money from each
30 year will be retained in the carpet product stewardship account created
31 in section 10 of this act and applied to reduce the payments by carpet
32 stewardship organizations in the following year. The department may
33 establish a variable fee based on relevant factors including, but not
34 limited to:

35 (1) The portion of carpet sold in the state by participants in the
36 product stewardship program administered by the carpet stewardship

1 organization compared to the total amount of carpet sold in the state
2 by all participants in all programs; and

3 (2) The portion of the department's costs related to
4 administration, oversight, and enforcement of a particular product
5 stewardship program compared to the total costs of the department in
6 the administration, oversight, and enforcement of all programs.

7 NEW SECTION. **Sec. 9.** Nothing in this chapter changes or limits
8 the authority of the Washington utilities and transportation commission
9 to regulate collection of solid waste, including curbside collection of
10 residential recyclable materials, nor does this chapter change or limit
11 the authority of a city or town to provide such service itself or by
12 contract under RCW 81.77.020.

13 NEW SECTION. **Sec. 10.** The carpet product stewardship account is
14 created in the state treasury. All receipts received by the department
15 from producers and carpet stewardship organizations must be deposited
16 in the account. Expenditures from the account may be used by the
17 department only for administering and implementing product stewardship
18 programs. Moneys in the account may be spent only after appropriation.

19 **Sec. 11.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are
20 each reenacted and amended to read as follows:

21 (1) The hearings board shall only have jurisdiction to hear and
22 decide appeals from the following decisions of the department, the
23 director, local conservation districts, the air pollution control
24 boards or authorities as established pursuant to chapter 70.94 RCW,
25 local health departments, the department of natural resources, the
26 department of fish and wildlife, and the parks and recreation
27 commission:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
29 section 7 of this act, 70.105.080, 70.107.050, 76.09.170, 77.55.291,
30 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
31 90.56.330, and 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
33 43.27A.190, 70.94.211, 70.94.332, section 5 of this act, 70.105.095,
34 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

1 (c) A final decision by the department or director made under
2 chapter 183, Laws of 2009.

3 (d) Except as provided in RCW 90.03.210(2), the issuance,
4 modification, or termination of any permit, certificate, or license by
5 the department or any air authority in the exercise of its
6 jurisdiction, including the issuance or termination of a waste disposal
7 permit, the denial of an application for a waste disposal permit, the
8 modification of the conditions or the terms of a waste disposal permit,
9 or a decision to approve or deny an application for a solid waste
10 permit exemption under RCW 70.95.300.

11 (e) Decisions of local health departments regarding the grant or
12 denial of solid waste permits pursuant to chapter 70.95 RCW.

13 (f) Decisions of local health departments regarding the issuance
14 and enforcement of permits to use or dispose of biosolids under RCW
15 70.95J.080.

16 (g) Decisions of the department regarding waste-derived fertilizer
17 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
18 department regarding waste-derived soil amendments under RCW 70.95.205.

19 (h) Decisions of local conservation districts related to the denial
20 of approval or denial of certification of a dairy nutrient management
21 plan; conditions contained in a plan; application of any dairy nutrient
22 management practices, standards, methods, and technologies to a
23 particular dairy farm; and failure to adhere to the plan review and
24 approval timelines in RCW 90.64.026.

25 (i) Any other decision by the department or an air authority which
26 pursuant to law must be decided as an adjudicative proceeding under
27 chapter 34.05 RCW.

28 (j) Decisions of the department of natural resources, the
29 department of fish and wildlife, and the department that are reviewable
30 under chapter 76.09 RCW, and the department of natural resources'
31 appeals of county, city, or town objections under RCW 76.09.050(7).

32 (k) Forest health hazard orders issued by the commissioner of
33 public lands under RCW 76.06.180.

34 (l) Decisions of the department of fish and wildlife to issue,
35 deny, condition, or modify a hydraulic project approval permit under
36 chapter 77.55 RCW.

37 (m) Decisions of the department of natural resources that are
38 reviewable under RCW 78.44.270.

1 (n) Decisions of a state agency that is an authorized public entity
2 under RCW 79.100.010 to take temporary possession or custody of a
3 vessel or to contest the amount of reimbursement owed that are
4 reviewable under RCW 79.100.120.

5 (2) The following hearings shall not be conducted by the hearings
6 board:

7 (a) Hearings required by law to be conducted by the shorelines
8 hearings board pursuant to chapter 90.58 RCW.

9 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
10 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

11 (c) Appeals of decisions by the department under RCW 90.03.110 and
12 90.44.220.

13 (d) Hearings conducted by the department to adopt, modify, or
14 repeal rules.

15 ~~((e) Appeals of decisions by the department as provided in chapter
16 43.21B RCW.))~~

17 (3) Review of rules and regulations adopted by the hearings board
18 shall be subject to review in accordance with the provisions of the
19 administrative procedure act, chapter 34.05 RCW.

20 **Sec. 12.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are
21 each reenacted and amended to read as follows:

22 (1) The hearings board shall only have jurisdiction to hear and
23 decide appeals from the following decisions of the department, the
24 director, local conservation districts, the air pollution control
25 boards or authorities as established pursuant to chapter 70.94 RCW,
26 local health departments, the department of natural resources, the
27 department of fish and wildlife, and the parks and recreation
28 commission:

29 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
30 section 7 of this act, 70.105.080, 70.107.050, 76.09.170, 77.55.291,
31 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
32 90.56.330, and 90.64.102.

33 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
34 43.27A.190, 70.94.211, 70.94.332, section 5 of this act, 70.105.095,
35 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

36 (c) Except as provided in RCW 90.03.210(2), the issuance,
37 modification, or termination of any permit, certificate, or license by

1 the department or any air authority in the exercise of its
2 jurisdiction, including the issuance or termination of a waste disposal
3 permit, the denial of an application for a waste disposal permit, the
4 modification of the conditions or the terms of a waste disposal permit,
5 or a decision to approve or deny an application for a solid waste
6 permit exemption under RCW 70.95.300.

7 (d) Decisions of local health departments regarding the grant or
8 denial of solid waste permits pursuant to chapter 70.95 RCW.

9 (e) Decisions of local health departments regarding the issuance
10 and enforcement of permits to use or dispose of biosolids under RCW
11 70.95J.080.

12 (f) Decisions of the department regarding waste-derived fertilizer
13 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
14 department regarding waste-derived soil amendments under RCW 70.95.205.

15 (g) Decisions of local conservation districts related to the denial
16 of approval or denial of certification of a dairy nutrient management
17 plan; conditions contained in a plan; application of any dairy nutrient
18 management practices, standards, methods, and technologies to a
19 particular dairy farm; and failure to adhere to the plan review and
20 approval timelines in RCW 90.64.026.

21 (h) Any other decision by the department or an air authority which
22 pursuant to law must be decided as an adjudicative proceeding under
23 chapter 34.05 RCW.

24 (i) Decisions of the department of natural resources, the
25 department of fish and wildlife, and the department that are reviewable
26 under chapter 76.09 RCW, and the department of natural resources'
27 appeals of county, city, or town objections under RCW 76.09.050(7).

28 (j) Forest health hazard orders issued by the commissioner of
29 public lands under RCW 76.06.180.

30 (k) Decisions of the department of fish and wildlife to issue,
31 deny, condition, or modify a hydraulic project approval permit under
32 chapter 77.55 RCW.

33 (l) Decisions of the department of natural resources that are
34 reviewable under RCW 78.44.270.

35 (m) Decisions of a state agency that is an authorized public entity
36 under RCW 79.100.010 to take temporary possession or custody of a
37 vessel or to contest the amount of reimbursement owed that are
38 reviewable under RCW 79.100.120.

1 (2) The following hearings shall not be conducted by the hearings
2 board:

3 (a) Hearings required by law to be conducted by the shorelines
4 hearings board pursuant to chapter 90.58 RCW.

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) Appeals of decisions by the department under RCW 90.03.110 and
8 90.44.220.

9 (d) Hearings conducted by the department to adopt, modify, or
10 repeal rules.

11 ~~((e) Appeals of decisions by the department as provided in chapter
12 43.211 RCW.))~~

13 (3) Review of rules and regulations adopted by the hearings board
14 shall be subject to review in accordance with the provisions of the
15 administrative procedure act, chapter 34.05 RCW.

16 NEW SECTION. **Sec. 13.** By December 1, 2016, the department shall
17 report to the appropriate committees of the legislature concerning the
18 status of adoption and implementation of product stewardship programs
19 and recommendations for revisions to improve the rate of carpet
20 recycling and other goals of this chapter.

21 NEW SECTION. **Sec. 14.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 15.** Section 11 of this act expires June 30,
26 2019.

27 NEW SECTION. **Sec. 16.** Section 12 of this act takes effect June
28 30, 2019.

29 NEW SECTION. **Sec. 17.** Sections 1 through 10, 13, and 14 of this
30 act constitute a new chapter in Title 70 RCW.

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