
SENATE BILL 5397

State of Washington

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By Senators Rolfes, Carlyle, Darneille, Saldaña, Hasegawa, Hunt, and Kuderer

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1 AN ACT Relating to the responsible management of plastic
2 packaging; amending RCW 43.21B.110; adding a new chapter to Title 70
3 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that policies
6 enacted by China banning plastic packaging waste imported from the
7 United States have illuminated problems and concerns with how waste
8 is managed worldwide. These concerns are echoed in Washington state
9 and emphasize the need for socially and environmentally responsible
10 management and disposal of plastic packaging. The beneficial
11 attributes of plastic packaging, including its durability, low cost,
12 and lightweight character, are also those that make plastic packaging
13 detrimental to the environment. The low cost of plastic packaging
14 contributes to it being used widely, and its durability means that it
15 will take thousands of years for it to degrade in the environment.
16 Additionally, the legislature finds that the costs and
17 responsibilities for managing plastic packaging have been
18 historically externalized from plastic packaging producers to
19 consumers, utility rate payers, local governments, and solid waste
20 facilities.

1 (2) The legislature intends that producers of plastic packaging
2 take responsibility for the design and management of their packaging
3 in a manner that ensures minimal social and environmental impacts.
4 Producers of plastic packaging must be involved from product design
5 to end-of-life management. This involvement of producers is necessary
6 to incentivize innovation and research into packaging design that
7 minimizes environmental impacts, promotes the use of recycled content
8 in plastic packaging, and ensures funding for collection, sorting,
9 reprocessing, and end-of-life management services.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires
12 otherwise.

13 (1) "Beach litter" means any persistent solid material that is
14 manufactured or processed and disposed of or abandoned into the
15 shoreline environment, without regard to whether the means by which
16 the material reached the shoreline environment were direct or
17 indirect or intentional or unintentional.

18 (2) "Brand" means a name, symbol, word, or mark that identifies a
19 product and attributes the product to the owner of the brand as the
20 producer.

21 (3) "Commission" means the Washington utilities and
22 transportation commission.

23 (4) "Compostable" means capable of undergoing aerobic biological
24 decomposition in a system meeting the requirements of chapter 70.95
25 RCW, that results in the material broken down primarily into carbon
26 dioxide, water, inorganic compounds, and biomass.

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

28 (6) "Disposal" includes incineration or use of a landfill, as the
29 terms "incineration" and "landfill" are defined under RCW 70.95.030,
30 or energy recovery from waste materials as end-of-life options.

31 (7) "End-of-life management" means the collection, sorting,
32 reprocessing, and management of materials, products, and product
33 packaging for reuse, recycling, composting, or disposal.

34 (8) "Energy recovery" means a process for converting solid waste
35 into usable energy and for reducing the volume of solid waste.

36 (9) "Food service product" means a product including containers,
37 plates, bowls, cups, lids, straws, cocktail picks, splash sticks,
38 stirrers, meat trays, hinged or lidded containers, deli rounds,
39 utensils, chop sticks, sachets, condiment packaging, portion cups,

1 sandwich wrap, wrappers, and other products that are intended for
2 one-time use for food or drink offered for sale or use.

3 (10) "Marine litter" means any persistent solid material that is
4 manufactured or processed and disposed of or abandoned into the
5 marine environment, without regard to whether the means by which the
6 material reached the marine environment were direct or indirect or
7 intentional or unintentional.

8 (11) "Material recovery facility" means a facility employing
9 various manual and machine processes to sort recyclable materials,
10 remove contamination, and consolidate materials for shipment.

11 (12) "Mechanical recycling" means the physical recovery of
12 materials from solid waste for recycling that does not alter the
13 chemical composition of the constituent materials of the solid waste.

14 (13) "Person" includes a firm, business, corporation, sole
15 proprietorship, authority, limited liability company, general
16 partnership, limited partnership, limited liability partnership,
17 association, cooperative, political subdivision, government agency,
18 unit of local government, Indian tribe, or any other entity of any
19 kind or nature.

20 (14) "Plan" means information that describes arrangements by
21 producers to fulfill the requirements of this chapter.

22 (15)(a) "Plastic packaging" means packaging made from plastic,
23 whether alone or in combination with another material, including
24 packaging that bonds plastic with other materials together, such as
25 metal lids bonded to plastic bottles, blister packs combining plastic
26 and paperboard, plastic-coated paper packaging, and aseptic
27 containers, and: (i) Is used to protect, contain, or transport a
28 commodity or product at any point from manufacture to its place of
29 use by a consumer; (ii) is attached to a commodity or product or its
30 container for the purpose of marketing or communicating information
31 about the commodity or product, and which is capable of being removed
32 and discarded when the product is put in use without adverse effect
33 on the quality or performance of the product; or (iii) are plastic
34 bags and food service products.

35 (b) "Plastic packaging" does not include packaging that meets
36 ASTM D6400 or ASTM D6868 standard specifications.

37 (16) "Plastic packaging category" means a group of plastic
38 packaging that has similar properties such as chemical composition
39 and properties, shape, or other characteristics, defined by a
40 stewardship organization for the purposes of implementing best

1 management practices for that particular plastic packaging group, for
2 assigning costs to the producers to implement the plastic packaging
3 stewardship program, and for reporting data and results.

4 (17) "Plastic packaging stewardship program" or "program" means a
5 program implemented by a stewardship organization for the collection,
6 transportation, end-of-life management, and litter cleanup of plastic
7 packaging.

8 (18) "Postconsumer plastic packaging recycled content" means the
9 content of a product made of recycled materials derived specifically
10 from postconsumer plastic packaging sources.

11 (19) "Producer of plastic packaging" means a person that meets
12 one of the criteria in (a) through (d) of this subsection, in
13 descending order of priority, for assigning responsibility to meet
14 the requirements of this chapter:

15 (a) Has legal ownership of the brand, brand name, or cobrand of a
16 product to which plastic packaging is applied, that is sold in, into,
17 or distributed for use in Washington state;

18 (b) Is the first importer of a product into Washington state, to
19 which plastic packaging has been applied, for sale in, into, or
20 distribution for use in Washington state;

21 (c) Sells at retail a product, to which plastic packaging has
22 been applied, acquired from an importer that is the producer; or

23 (d) Elects to assume the responsibility and register in lieu of a
24 producer as defined under (a) through (c) of this subsection.

25 (20)(a) "Public place" includes streets, sidewalks, plazas, town
26 squares, public parks, beaches, forests, or other public land open
27 for recreation or other uses, and transportation facilities such as
28 bus and train stations, airports, and ferry terminals.

29 (b) "Public place" does not include industrial, commercial, or
30 privately owned property.

31 (21) "Recycling" has the same meaning as defined in RCW
32 70.95.030.

33 (22) "Reprocessing" means an action after material sorting
34 whereby materials are transformed into a refined state prior to being
35 remanufactured into a new product.

36 (23) "Retailer" means a person who offers products for sale at
37 retail through any means including, but not limited to, stores or
38 shops and remote offerings such as sales outlets, catalogs, or the
39 internet.

1 (24) "Rigid plastic packaging container" means any plastic
2 packaging container having an inflexible finite shape or form,
3 maintaining the same shape empty as full, except for containers that
4 meet ASTM D6400.

5 (25) "Secondary material recovery facility" means an industrial
6 facility that accepts difficult to sort or low-volume or low-value
7 materials from material recovery facilities and, using advanced
8 technologies, conducts further separation and contamination removal
9 to aggregate materials for shipment and disposal of nonrecyclable
10 residuals.

11 (26) "Sorting" means to separate materials into items with
12 similar properties at a primary or secondary material recovery
13 facility in preparation for their reuse, recycling, or sale as a
14 commodity.

15 (27) "Standard specification" means:

16 (a) ASTM D6400—Standard specification labeling of plastics
17 designed to be aerobically composted in municipal or industrial
18 facilities, as it existed as of January 1, 2019; and

19 (b) ASTM D6868—Standard specification for labeling of end items
20 that incorporate plastics and polymers as coatings or additives with
21 paper and other substrates designed to be aerobically composted in
22 municipal or industrial facilities, as it existed as of January 1,
23 2019.

24 (28) "Stewardship organization" means a nonprofit organization
25 that has qualified under 501(c)(3) of the internal revenue code and
26 is designated and financed by a producer or a group of producers to
27 act as an agent on behalf of each producer to develop and operate a
28 plastic packaging stewardship program required under this chapter.

29 (29) "Waste management hierarchy" means a management system of
30 plastic packaging that is put into the marketplace, collected,
31 sorted, and reprocessed and prioritized in descending order as
32 follows:

33 (a) Prevention and waste reduction;

34 (b) Reuse;

35 (c) Mechanical recycling;

36 (d) Chemical recycling, which converts plastic materials into
37 smaller molecules as a feedstock for the production of new
38 petrochemicals and plastics; and

39 (e) Energy recovery, incineration, or landfill, as those terms
40 are defined under RCW 70.95.030.

1 NEW SECTION. **Sec. 3.** (1)(a) Beginning January 1, 2022, a
2 producer of plastic packaging may not sell, offer for sale, or
3 distribute plastic packaging for use in Washington unless the
4 producer is participating in a plastic packaging stewardship
5 organization with a plan approved by the department. Producers may
6 satisfy participation obligations individually or jointly with other
7 producers.

8 (b) By June 1, 2021, each producer must ensure that a plan is
9 submitted on its behalf to the department by a stewardship
10 organization.

11 (2) After July 1, 2022, a stewardship organization must begin
12 implementing its plan no later than three months after the department
13 approves the plan submitted consistent with section 4 of this act.

14 (3) A producer is exempt from the requirements of this chapter if
15 the producer:

16 (a) Generates less than one million dollars in annual revenues;

17 (b) Generates less than one ton of plastic packaging supplied to
18 Washington state residents per year; or

19 (c) Operates as a single point of retail sale and is not supplied
20 or operated as part of a franchise.

21 (4) Retailers that are not producers are exempt from the
22 requirements of this chapter.

23 NEW SECTION. **Sec. 4.** (1) A stewardship organization must submit
24 a plan to the department that describes the management of plastic
25 packaging according to the program elements established in sections 5
26 through 15 of this act.

27 (2) A plan must include, but is not limited to:

28 (a) Stewardship organization contact information and a list of
29 participating producers and brands covered by the program;

30 (b) A description of the plastic packaging categories for which
31 the program and its members are taking responsibility including:

32 (i) Baseline data for the current management practices for each
33 plastic packaging category organized according to the waste
34 management hierarchy;

35 (ii) Goals for each plastic packaging category to progressively
36 manage plastic packaging higher in the waste management hierarchy
37 including:

38 (A) Assignment of each plastic category or subcategory to a best
39 management practice, aligned with the waste management hierarchy, and

1 a description and timeline for how the stewardship organization will
2 achieve a minimum goal of eighty percent capture of the plastic
3 category into its assigned best management practice;

4 (B) A description of how the stewardship organization will manage
5 the remaining amount of packaging not captured in its assigned best
6 management practice in such a way that it does not become litter or
7 contamination in recycling or compost systems; and

8 (C) For categories that are managed by energy recovery,
9 incineration, or landfill, a justification and comprehensive
10 analysis, available to the public, for why energy recovery,
11 incineration, or landfill is the best management practice;

12 (c) A process for determining the amount of packaging
13 participating producers sell in or into the state each year, by
14 plastic packaging category, that will be reported annually to the
15 department, at a minimum, in an aggregate amount by plastic packaging
16 category;

17 (d) A comprehensive analysis of types, quantity, and weight of
18 plastic packaging litter by category or brand found in public places,
19 freshwater and marine environments, and in materials managed at
20 compost facilities or other facilities handling organic wastes;

21 (e) A comprehensive analysis of the overall amount of packaging
22 in the recycling waste stream containing more than de minimis food
23 residue or food waste. The analysis must include: An evaluation of
24 the impact of residual food on recycling waste management and the
25 amount of food waste that would be diverted to the compost stream if
26 compostable food packaging were used as an alternative;

27 (f) A detailed budget and description of the funding mechanism
28 including:

29 (i) Demonstration that the funding is sufficient to implement the
30 stewardship program; and

31 (ii) The process for allocating costs to the participating
32 producers;

33 (g) A description of how the stewardship organization will work
34 with the department of commerce, local economic development agencies,
35 and others to fund local infrastructure investment, business
36 development, and job creation;

37 (h) A description of how the stewardship organization will work
38 with and fund groups that collect plastic packaging litter from
39 public places and freshwater and marine environments in Washington;

1 (i) A description of how the stewardship organization will work
2 with and compensate organic waste collection programs and commercial
3 compost facilities and other facilities managing organic wastes, to
4 prevent and remove plastic packaging contamination in these programs
5 and at these facilities;

6 (j) A description of how the stewardship organization will work
7 with its program members and provide incentives to reduce litter,
8 improve the reuse and recyclability of members' packaging through
9 design, material selection, and reduction or elimination of toxic
10 substances;

11 (k) A description of the process to consider and establish
12 innovative means to increase collection of plastic packaging produced
13 by members of the plan, such as through buy back or deposit and
14 return mechanisms;

15 (l) A description of the process for producers to participate in
16 the postconsumer recycled content trade credit mechanism and
17 verification process, as established under section 9 of this act; and

18 (m) Documentation detailing how all calculations, analyses, and
19 figures in the plan are determined.

20 NEW SECTION. **Sec. 5.** (1) Product stewardship organizations must
21 provide for widespread, convenient, and equitable access to
22 collection opportunities for the producer's plastic packaging in all
23 counties and tribal lands within the state, including rural and
24 island communities, unless otherwise approved by the department,
25 after consultation with the product stewardship program's advisory
26 committee and other stakeholders. A product stewardship organization
27 may rely on a range of means to collect various categories of covered
28 packaging including, but not limited to, curbside collection, depot
29 drop-off, and retailer take-back.

30 (a) Plastic packaging collection options must include curbside or
31 multifamily recycling collection services provided by municipal and
32 tribal programs, municipal and tribal contracted programs, and solid
33 waste collection companies regulated by the commission where those
34 services exist, if:

35 (i) The category of plastic packaging is suitable for curbside or
36 multifamily recycling collection and can be effectively sorted by the
37 facilities receiving the curbside collected material;

38 (ii) The provider of the curbside or multifamily service agrees
39 to include the category of plastic packaging as an accepted material;

1 (iii) The plastic packaging category is not handled through a
2 deposit and return scheme or buy back system that relies on a
3 collection system other than curbside or multifamily collection; and

4 (iv) The provider of the curbside or multifamily service agrees
5 to the product stewardship program compensation arrangement.

6 (b) Curbside collection options for plastic packaging categories
7 destined for disposal may be provided only by municipal programs,
8 municipal contracted programs, or solid waste collection companies
9 regulated by the commission.

10 (2) Product stewardship programs must:

11 (a) Work with and fully compensate municipalities, solid waste
12 collection, sorting, and reprocessing companies, and others to
13 utilize existing curbside or multifamily and other collection
14 programs for the management and disposal of plastic packaging;

15 (b) Ensure that the collection means and systems utilized direct
16 the collected plastic packaging to the most appropriate plastic
17 management alternatives; and

18 (c) Provide periodic surveying and material stream audits to
19 determine effectiveness and convenience of collection services.

20 NEW SECTION. **Sec. 6.** The product stewardship program must:

21 (1) Ensure that:

22 (a) The collection means and systems utilized direct the plastic
23 packaging to facilities that are effective in sorting and
24 reprocessing plastic packaging prior to shipment in a form ready for
25 remanufacture into new products;

26 (b) Plastic packaging exported for recycling is managed in an
27 environmentally sound and socially just manner at facilities
28 operating with human health and environmental protection standards
29 that are broadly equivalent to those required in the United States
30 and other countries that are members of the organization for economic
31 cooperation and development. The product stewardship program must
32 include measures to track, verify, and publicly report that recycled
33 plastics are managed responsibly;

34 (c) Plastics are sorted to specific plastic packaging resin type
35 prior to export to countries that are not members of the organization
36 for economic cooperation and development and are not exported as
37 mixed plastics that require further separation to remove
38 contamination and nonrecyclable plastics and other materials; and

1 (d) Incentives, including economic instruments and other
2 measures, are adequate to make certain the waste management hierarchy
3 is applied to plastic packaging that is put into the marketplace,
4 collected, sorted, and reprocessed;

5 (2) Take measures to: (a) Promote high-quality recycling; and (b)
6 meet the necessary quality standards for the relevant facilities that
7 manufacture new products from the collected, sorted, and reprocessed
8 materials; and

9 (3) Prioritize the recycling of plastic packaging into the same
10 category of product as the original over recycling that results in a
11 product of a lower quality, functionality, or value than the original
12 item.

13 NEW SECTION. **Sec. 7.** (1) The product stewardship program must
14 prevent plastic packaging from becoming litter and collect littered
15 plastic packaging from public places and freshwater and marine
16 environments in Washington.

17 (2) The product stewardship program must address the litter of
18 plastic packaging by:

19 (a) Funding and working with groups that collect plastic
20 packaging litter from public places and freshwater and marine
21 environments within Washington; and

22 (b) Working with producers to reduce plastic packaging through
23 product design and program innovations.

24 NEW SECTION. **Sec. 8.** The product stewardship program must
25 provide effective outreach, education, and communications regarding
26 reuse, collection, and prevention of litter of plastic packaging. The
27 stewardship organization must undertake outreach, education, and
28 communications that are sufficient to attain the plastic packaging
29 management goals established under section 4 of this act and prevent
30 contamination by plastic packaging in other management systems or in
31 other materials. At a minimum, activities must include:

32 (1) Consulting on education, outreach, and communications with
33 the product stewardship program's advisory committee and other
34 stakeholders;

35 (2) Coordinating with and assisting local municipal programs,
36 municipal contracted programs, solid waste collection companies
37 regulated by the commission, and other entities providing services to
38 the product stewardship program;

1 (3) Developing and providing outreach and education to the
2 state's diverse ethnic populations, through translated and culturally
3 appropriate materials, including in-language and targeted outreach;

4 (4) Establishing consumer web sites and mobile applications that
5 provide information about methods to prevent plastic packaging
6 pollution and how consumers may access and use collection services;

7 (5) Working with product stewardship program participants to
8 label plastic packaging with information to assist consumers to
9 responsibly manage plastic packaging;

10 (6) Determining the effectiveness of outreach, education,
11 communications, and convenience of services, including to diverse
12 ethnic and rural and island communities by conducting focus groups
13 and characterization studies, surveying, cart studies, and other
14 means. The program must conduct these activities at least as often
15 as, and prior to, product stewardship plan updates, as required under
16 section 12 of this act.

17 NEW SECTION. **Sec. 9.** A stewardship organization must establish
18 and implement a postconsumer recycled content trade credit mechanism,
19 reporting, and verification process for participating producers.

20 (1) The postconsumer recycled content trade credit mechanism must
21 be supported by reporting procedures that allow stewardship
22 organizations and the department to verify producer compliance using
23 the postconsumer recycled content trade credit mechanism.

24 (2) The postconsumer recycled content trade credit mechanism may
25 be used to meet compliance requirements established under section 14
26 of this act.

27 (3) Producers required to meet recycled content requirements of
28 this chapter may buy, sell, or trade credits to achieve compliance
29 with the recycled content requirements of this chapter through the
30 postconsumer recycled content trade credit mechanism. Producers that
31 exceed the required percent postconsumer recycled content in their
32 covered products may:

33 (a) Sell or trade credits to other producers that do not meet the
34 requirements; or

35 (b) Bank and apply the postconsumer recycled content trade
36 credits to their own products that do not meet the recycled content
37 requirements.

38 NEW SECTION. **Sec. 10.** A producer or group of producers must:

1 (1) Pay all administrative and operational costs necessary to
2 establish and implement the plastic packaging stewardship program in
3 which they participate, including:

4 (a) Financing statewide collection of plastic packaging that the
5 stewardship organization has taken responsibility for in its plan,
6 including but not limited to plastic packaging for reuse, recycling,
7 and disposal;

8 (b) Covering the full costs for:

9 (i) Services provided by municipal programs, municipal contracted
10 programs, or solid waste collection companies regulated by the
11 commission, and other services, such as retailer take-back or drop-
12 off depots, which may be established by contract or other form of
13 agreement as necessary;

14 (ii) Sorting, reprocessing, and marketing, including costs
15 incurred by municipalities, solid waste collection companies,
16 material recovery facilities, secondary material recovery facilities,
17 reprocessors, and plastic recovery facilities, as well as the costs
18 required to meet the objectives of environmentally sound reprocessing
19 and marketing requirements established in section 6 of this act; and

20 (c) Verifying and reporting voluntary agreements by collectors to
21 participate within the plastic packaging stewardship program;

22 (2) Ensure that a minimum of ten percent of the overall plastic
23 packaging stewardship program expenditures are dedicated for market
24 and recycling infrastructure development in Washington state, which
25 may include installing or upgrading equipment to improve sorting of
26 plastic packaging or mitigating the impacts of plastic packaging to
27 other commodities at existing sorting and reprocessing facilities;

28 (3)(a) Provide a minimum of ten percent of overall program
29 expenditures to:

30 (i) Clean up plastic packaging litter from public places and
31 other environments that is in addition to and supplemental to
32 activities funded by the litter tax imposed by RCW 82.19.010; and

33 (ii) Remove plastic packaging contaminants at compost and other
34 facilities that manage organic materials;

35 (b) The minimum percentage of program expenditures required under
36 this subsection and subsection (2) of this section must be based on
37 the plastic packaging stewardship program previous fiscal year's
38 expenditures, except for the first year of the program, which must be
39 based on the program's overall budgeted expenditures;

1 (4) Set the funding level for activities specified under this
2 section so that it is sufficient to meet plastic packaging management
3 goals established in the plan submitted under section 4 of this act.
4 The funding level must be no less than one dollar per Washington
5 resident per year and must be annually adjusted for inflation based
6 upon changes in the consumer price index;

7 (5) Maintain a financial reserve sufficient to operate the
8 program in a fiscally prudent and responsible manner;

9 (6) Establish and maintain program elements necessary to
10 implement the stewardship program created under this chapter; and

11 (7) Reimburse the department's operating and administrative
12 costs, as required under section 16 of this act.

13 NEW SECTION. **Sec. 11.** (1) A stewardship organization must
14 establish program participation charges for producers to fully cover
15 all program costs, consistent with section 10 of this act.

16 (2) A stewardship organization must structure program charges to
17 provide producers with financial incentives, as required under
18 section 7 of this act, to reward waste reduction and recycling
19 compatibility innovations and best practices and discourage designs
20 or practices that increase system costs of managing plastic
21 packaging. The stewardship organization may adjust charges to be paid
22 by participating producers based on factors that impact system costs.
23 At a minimum, charges must be:

24 (a) Variable based upon:

25 (i) Costs to properly manage categories of plastic packaging;

26 (ii) Category and brand of plastic packaging, in relation to the
27 costs to clean up the producer's plastic packaging from public
28 places, freshwater and marine environments, and in materials managed
29 at compost facilities or other facilities handling organic wastes;

30 (b) Higher for packaging that:

31 (i) Bonds plastic together with other materials, such as paper or
32 metal;

33 (ii) Would typically be recyclable except that as a consequence
34 of its design, it has the effect of disrupting recycling processes;
35 or

36 (iii) Includes labels, inks, and adhesives containing heavy
37 metals or other toxic substances;

38 (c) Lower for:

1 (i) Bottles and other containers that have nondetachable caps or
2 other innovations and design characteristics to prevent littering;

3 (ii) Nonfood contact containers and other nonfood contact
4 packaging that are specifically designed to be reusable or refillable
5 and have a high reuse or refill rate;

6 (iii) Packaging that has verified postconsumer plastic packaging
7 recycled content that exceeds the minimum requirements established in
8 section 14 of this act and whose extra credits have not been traded
9 or applied to other packaging through the postconsumer recycled
10 content trade credit mechanism. The charges must be adjusted based
11 upon the percentage of recycled content derived from postconsumer
12 plastic packaging, as long as the recycled content does not disrupt
13 the potential for future recycling; and

14 (iv) Plastic packaging that is made of at least ninety percent by
15 weight in any combination of: (A) Postconsumer plastic packaging
16 recycled content; or (B) plastics derived from land or freshwater or
17 marine environment litter.

18 (3) (a) When required incentives are no longer relevant or needed,
19 a stewardship organization, after consultation with its advisory
20 committee and other stakeholders, may propose an updated plan and
21 petition the department to eliminate specific incentives.

22 (b) Upon department approval of the petition and amended plan,
23 incentives may no longer be enforced or required, unless the
24 department determines there are unanticipated consequences from
25 removing the requirements.

26 (c) The department may reinstate incentive requirements by
27 providing written notice to the plastic product stewardship
28 organization. The stewardship organization must update its plan to
29 reinstate the incentives during the next fiscal year.

30 NEW SECTION. **Sec. 12.** (1) (a) A stewardship plan must be updated
31 two years after the program begins and every five years thereafter.
32 Each stewardship organization operating a plastic packaging
33 stewardship program must update its stewardship plan, in consultation
34 with the program's advisory committee and other stakeholders, and
35 submit the updated plan to the department for review and approval.

36 (b) A plastic packaging stewardship organization's plan must
37 provide a public web site with information as required under section
38 4 of this act.

1 (2) (a) Stewardship plans must be amended when the plastic
2 packaging stewardship program fails to provide services in each
3 county in the state or meet other significant plan and program
4 requirements. Within ninety days, the stewardship organization must
5 submit to the department an amended plan addressing how the program
6 will be modified to meet the program requirements.

7 (b) The stewardship organization must notify the department of
8 any modification to the program. If the department determines that
9 the stewardship organization has significantly modified the program
10 described in the plan, the stewardship organization, after
11 consultation with its advisory committee and other stakeholders, must
12 submit a proposed plan amendment describing the changes to the
13 department within ninety days of the determination.

14 (3) Within ninety days of the receipt of a proposed amended plan,
15 the department must determine whether the revised amended plan
16 complies with this chapter. The department must send a letter
17 notifying the stewardship organization of: (a) Approval; or (b)
18 disapproval, including the reasons for rejecting the plan. The
19 stewardship organization must provide the department's letter of
20 disapproval to its advisory committee. The stewardship organization
21 must submit a revised plan within sixty days after receipt of the
22 letter of disapproval.

23 NEW SECTION. **Sec. 13.** Beginning April 1, 2023, and each April
24 1st thereafter, a stewardship organization must submit an annual
25 report to the department in a format developed by the department. The
26 annual report must include a description of the following:

27 (1) All elements required of the plan and program in sections 4
28 through 15 of this act, including collection, reprocessing, and
29 marketing, litter clean up, and recycled content;

30 (2) The program's progress in meeting goals identified in the
31 plan submitted consistent with section 4 of this act. The information
32 reported under this subsection (2) must include, but is not limited
33 to:

34 (a) Reports on the baseline of plastic packaging, by type and
35 brand, found in litter, beach litter, freshwater and marine debris,
36 and compost facilities;

37 (b) Progress in meeting goals to progressively reduce the
38 quantity and portion of plastic packaging in litter, beach litter,
39 freshwater and marine debris, and compost facilities; and

1 (c) Reports on the compliance of program members with recycled
2 content requirements of this chapter, where applicable;

3 (3) A description of planned changes to the program that are
4 being considered for the coming year, but which do not require a new
5 plan or plan amendment to be filed with the department under section
6 12 of this act;

7 (4) Names, locations, services provided, and plastic packaging
8 material volumes handled by all collection services and locations and
9 by all sorters and reprocessors, by plastic packaging category
10 covered by the program;

11 (5) Reports on the determination of how much packaging its
12 program members sell in or into the state each year, by plastic
13 packaging category.

14 NEW SECTION. **Sec. 14.** (1)(a) Beginning January 1, 2023, only
15 rigid plastic packaging containers containing at least twenty-five
16 percent postconsumer plastic packaging material and labeled as such
17 may be sold, offered for sale, or distributed for use in Washington.

18 (b) A producer that does not meet the twenty-five percent
19 postconsumer plastic packaging content requirement must participate
20 in a postconsumer recycled content trade credit mechanism provided by
21 a stewardship organization, consistent with the plan element required
22 under section 9 of this act.

23 (2) Subsection (1) of this section does not apply where
24 prohibited by federal law and to rigid plastic packaging containers
25 that:

26 (a) Contain drugs or medical devices as defined in the federal
27 food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

28 (b) Contain toxic or hazardous products regulated by the federal
29 insecticide, fungicide, and rodenticide act (7 U.S.C. Sec. 136 et
30 seq.); or

31 (c) Are manufactured for use in the shipment of hazardous
32 materials and are prohibited from being manufactured with used or
33 recycled content material by federal packaging material
34 specifications and testing standards set forth in Title 49 C.F.R.
35 Secs. 178.509 and 178.522, or are subject to testing standards set
36 forth in Title 49 C.F.R. Secs. 178.600 through 178.609, inclusive, or
37 to which recommendations of the United Nations on the transport of
38 dangerous goods are applicable.

1 (3) Beginning January 1, 2023, a producer or other person may
2 only sell, offer for sale, or distribute for use in Washington:

3 (a) Plastic film bags for garbage, waste container, carryout
4 shopping, produce, take-out food, home food delivery, newspaper, dry
5 cleaning, wet umbrella, and air shipping, and shipping envelopes that
6 are made from at least twenty-five percent postconsumer plastic
7 packaging and are labeled as such; and

8 (b) Bags that meet the standard specifications as compostable.

9 (4) A producer whose noncompostable plastic packaging does not
10 meet the twenty-five percent postconsumer plastic packaging content
11 requirement under subsection (3) of this section must fulfill its
12 obligation through participating in a postconsumer recycled content
13 trade credit mechanism provided by a stewardship organization to its
14 program members consistent with section 14 of this act.

15 (5) Beginning January 1, 2020, a producer or person may only
16 sell, offer for sale, or distribute for use in Washington plastic
17 collection bins made from at least twenty-five percent postconsumer
18 plastic packaging recycled content.

19 (a) A person with an existing municipal contract for plastic
20 collection bins that was in place prior to August 1, 2019, is exempt
21 from this section until the expiration or renewal date of the
22 contract. A new or renewed contract whose terms take effect after
23 August 1, 2019, must be consistent with the requirements of this
24 section. Exempt persons are encouraged to meet the requirements of
25 this section.

26 (b) Producers of plastic collection bins, including persons that
27 sell, offer for sale, distribute, or provide collection bins in
28 Washington must provide written evidence or certification, upon
29 request, to the department or any municipality, retailer, stewardship
30 organization, solid waste collection company, or other purchaser of
31 collection bins showing that their collection bins meet the
32 requirements of this section.

33 (c) For the purposes of this subsection (5), "plastic collection
34 bins" include plastic bins, cans, carts, totes, or other receptacles
35 used to collect recyclables, compostable materials, or garbage used
36 by solid waste collection services.

37 NEW SECTION. **Sec. 15.** (1) A stewardship organization must
38 establish an advisory committee that represents a range of interested
39 and engaged persons relevant to the program's covered packaging,

1 including collection providers, clean-up service providers, and
2 Washington state residents. At a minimum, the advisory committee must
3 include one person representing each of the following:

4 (a) The department;

5 (b) Cities, including both small and large cities and cities
6 located in urban and rural counties;

7 (c) Counties, including both small and large counties and urban
8 and rural counties;

9 (d) Public sector recycling and solid waste industries;

10 (e) Private sector recycling and solid waste industries;

11 (f) Recycled plastic feedstock users;

12 (g) Public place litter programs;

13 (h) Freshwater and marine litter programs;

14 (i) Environmental organizations; and

15 (j) Indian tribes.

16 (2) The stewardship organization must periodically provide a
17 process to receive comment from additional stakeholders, and
18 community members, that includes diverse ethnic populations.

19 (3) The stewardship organization must reimburse representatives
20 of community groups, tribal, and nonprofit members for their expenses
21 related to participating on the advisory committee. Other members may
22 be compensated for travel expenses on an as needed basis to ensure
23 their ability to participate.

24 (4) The stewardship organization must:

25 (a) Hold an advisory committee meeting at least once per year;

26 (b) Request and consider comments from its advisory committee
27 prior to submission of plan updates and amendments to the department;

28 (c) Report comments to the department as an appendix to submitted
29 plan updates and revisions; and

30 (d) Include a summary of advisory committee engagement and input
31 in an annual report submitted to the department.

32 NEW SECTION. **Sec. 16.** (1) Beginning April 1, 2023, the
33 department shall annually determine its costs for administering and
34 enforcing plastic packaging stewardship programs under this chapter.
35 The amount must be sufficient to cover but not exceed the costs to
36 the department.

37 (2) The department shall estimate the annual costs for the period
38 of July 1st through June 30th and notify each stewardship
39 organization by April 1st of the prior fiscal year. If there is more

1 than one stewardship organization implementing a plastic packaging
2 stewardship program in Washington, the cost must be divided
3 proportionately between organizations, based on the percent of total
4 plastic packaging sold into the state by the producers represented by
5 each stewardship organization.

6 (3) The department must make the proposed annual costs, including
7 an accounting of the costs, available for public review and comment
8 for at least thirty days.

9 (4) Any unspent money from the previous twelve-month period must
10 be retained in the responsible plastic packaging stewardship account
11 created in section 19 of this act and applied to the amount paid by
12 stewardship organizations to the department in the following year.

13 (5) The stewardship organization must submit the amount
14 determined to cover department costs, as established under subsection
15 (3) of this section, by June 30, 2022, and annually thereafter.

16 (6) By January 1, 2022, each stewardship organization must submit
17 an administration payment of two hundred thousand dollars to the
18 department to cover rule making, initial program oversight, and other
19 costs anticipated to be incurred by the department prior to June 30,
20 2022.

21 NEW SECTION. **Sec. 17.** (1) The department must:

22 (a) Review submitted plastic packaging stewardship plans within
23 one hundred twenty days of receipt, except for amended plans as
24 established under section 12(3) of this act;

25 (b) Approve plans that establish a stewardship program meeting
26 the requirements of this chapter; and

27 (c) Provide notice to the stewardship organization when the plan
28 is:

29 (i) Not approved and the reasons for rejection; or

30 (ii) Approved.

31 (2) Upon approval, the department must make plans and plan
32 amendments available for public review and comments for thirty days.
33 The information must be posted on the department's web site that
34 provides links to plastic product stewardship organizations plan web
35 sites.

36 (3) (a) The department may administratively impose a civil penalty
37 on any person who violates this chapter in an amount of up to one
38 thousand dollars per violation per day.

1 (b) The department may assess a civil penalty of up to ten
2 thousand dollars per violation per day on any person that
3 intentionally, knowingly, or negligently violates this chapter.

4 (c) Any person who incurs a penalty under this section may appeal
5 the penalty to the pollution control hearings board established by
6 chapter 43.21B RCW.

7 (4) The department may request information from the stewardship
8 organization that is in addition to the annual reporting requirements
9 in section 13 of this act.

10 (5) (a) The department must adopt rules for:

11 (i) Plan content as required under section 4 of this act; and

12 (ii) The process used to determine costs and application of the
13 costs proportionately between stewardship organizations, as required
14 under section 16 of this act.

15 (b) The department may adopt rules as necessary for the purpose
16 of implementing, administering, and enforcing this chapter.

17 NEW SECTION. **Sec. 18.** (1) The legislature anticipates that the
18 plastic packaging stewardship programs required in this chapter will
19 have the effect of reducing or replacing some current costs for
20 providing existing management of plastic packaging by local
21 governments and regulated service providers and expanding plastic
22 packaging management beyond what is currently financed by local
23 governments and rate payers. When the costs to local governments and
24 service providers are reduced or replaced, the local governments and
25 service providers are encouraged to:

26 (a) Invest no less than ten percent of savings to waste
27 prevention programs and activities that reduce the use of single-use
28 plastic packaging that is designed or intended to be used once before
29 being disposed or recycled, especially such packaging that is
30 commonly found in public places and as streetside, beach, freshwater,
31 and marine litter; and

32 (b) Reduce and adjust rates that would have otherwise been paid
33 by ratepayers for services that are not subject to regulation by the
34 commission under chapter 81.77 RCW.

35 (2) Services subject to regulation by the commission that receive
36 payment for collection or sorting services under this chapter must
37 report payments made by stewardship organizations or relevant cost
38 reductions related to their management of plastic packaging due to
39 the stewardship program to the commission in relevant rate filings

1 under chapter 81.77 RCW. Nothing in this section limits the authority
2 of the commission to set and adjust rates for services regulated by
3 the commission.

4 NEW SECTION. **Sec. 19.** The responsible plastic packaging
5 stewardship account is created in the state treasury. All receipts
6 received by the department from stewardship organizations must be
7 deposited in the account. Moneys in the account may be spent only
8 after appropriation. Expenditures from the account may be used by the
9 department only for implementing, administering, and enforcing
10 plastic packaging stewardship programs.

11 **Sec. 20.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
12 read as follows:

13 (1) The hearings board shall only have jurisdiction to hear and
14 decide appeals from the following decisions of the department, the
15 director, local conservation districts, the air pollution control
16 boards or authorities as established pursuant to chapter 70.94 RCW,
17 local health departments, the department of natural resources, the
18 department of fish and wildlife, the parks and recreation commission,
19 and authorized public entities described in chapter 79.100 RCW:

20 (a) Civil penalties imposed pursuant to RCW 18.104.155,
21 70.94.431, 70.105.080, 70.107.050, 70.275.100, section 17 of this
22 act, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600,
23 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

24 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
25 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
26 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

27 (c) Except as provided in RCW 90.03.210(2), the issuance,
28 modification, or termination of any permit, certificate, or license
29 by the department or any air authority in the exercise of its
30 jurisdiction, including the issuance or termination of a waste
31 disposal permit, the denial of an application for a waste disposal
32 permit, the modification of the conditions or the terms of a waste
33 disposal permit, or a decision to approve or deny an application for
34 a solid waste permit exemption under RCW 70.95.300.

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

1 (e) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70.95J.080.

4 (f) Decisions of the department regarding waste-derived
5 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
6 decisions of the department regarding waste-derived soil amendments
7 under RCW 70.95.205.

8 (g) Decisions of local conservation districts related to the
9 denial of approval or denial of certification of a dairy nutrient
10 management plan; conditions contained in a plan; application of any
11 dairy nutrient management practices, standards, methods, and
12 technologies to a particular dairy farm; and failure to adhere to the
13 plan review and approval timelines in RCW 90.64.026.

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

17 (i) Decisions of the department of natural resources, the
18 department of fish and wildlife, and the department that are
19 reviewable under chapter 76.09 RCW, and the department of natural
20 resources' appeals of county, city, or town objections under RCW
21 76.09.050(7).

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

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

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

29 (m) Decisions of an authorized public entity under RCW 79.100.010
30 to take temporary possession or custody of a vessel or to contest the
31 amount of reimbursement owed that are reviewable by the hearings
32 board under RCW 79.100.120.

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

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

37 (b) Hearings conducted by the department pursuant to RCW
38 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
39 90.44.180.

1 (c) Appeals of decisions by the department under RCW 90.03.110
2 and 90.44.220.

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

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

8 NEW SECTION. **Sec. 21.** Sections 1 through 19 of this act
9 constitute a new chapter in Title 70 RCW.

10 NEW SECTION. **Sec. 22.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

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