
SENATE BILL 5219

State of Washington

67th Legislature

2021 Regular Session

By Senators Stanford, Lias, Conway, Hunt, Keiser, Kuderer, Nguyen, and Wilson, C.

Read first time 01/14/21. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to the management of plastic packaging materials;
2 amending RCW 70A.200.140; reenacting and amending RCW 43.21B.110;
3 adding a new section to chapter 42.56 RCW; adding a new chapter to
4 Title 70A RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) Sustainable and resilient markets for
7 recycled materials are essential to any successful recycling system.
8 For many years, Washington has depended on foreign markets to accept
9 the recyclable materials that are collected for recycling in the
10 state. Developing domestic markets for recycled materials benefits
11 the environment and the state's economy and is critical due to the
12 loss of foreign markets.

13 (2) China's 2018 national sword policy bans the importation of
14 recycled mixed paper and certain types of recycled plastic and
15 imposes a stringent contamination limit on all other recycled
16 material imports. Washington's recycling facilities are struggling to
17 find markets for recyclable materials.

18 (3) Plastic packaging can be recycled and can contain recycled
19 content in order to close the loop in the recycling stream. Many
20 companies have already taken the initiative at closing the loop by
21 using plastic bottles that contain 100 percent recycled content.

1 Since November 2010, one national juice company has been using
2 bottles made with 100 percent postconsumer recycled content for all
3 of its juices and juice smoothies. In January 2018, an international
4 beverage producer announced that it will make all its bottles from
5 100 percent recycled plastic by 2025.

6 (4) The requirements imposed by this chapter are reasonable and
7 are achievable at minimal cost relative to the burden imposed by the
8 continued excessive use of virgin materials in plastic packaging in
9 Washington.

10 (5) The legislature encourages plastic packaging producers to use
11 plastic packaging that exceeds the standards set forth in this
12 chapter.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires
15 otherwise.

16 (1) "Department" means the department of ecology.

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

29 (b) "Plastic packaging" includes packaging that is filled or
30 unfilled and packaging that is intended to be sold as a product to
31 customers.

32 (3) "Postconsumer recycled content" means the content of a
33 product made of recycled materials derived specifically from
34 postconsumer plastic packaging sources.

35 (4) "Producer" means a person that: (a) Has legal ownership of
36 the brand, brand name, or cobrand of a product to which plastic
37 packaging is applied, that is sold in, into, or distributed for use
38 in Washington state; or (b) is the importer of a product into

1 Washington state, to which plastic packaging has been applied, for
2 sale in, into, or distribution for use in Washington state.

3 NEW SECTION. **Sec. 3.** (1) Each year, a producer of plastic
4 packaging must meet the following minimum postconsumer recycled
5 content on average for the total amount of plastic packaging sold,
6 offered for sale, or distributed in Washington effective:

7 (a) July 1, 2023, through December 31, 2026: No less than 15
8 percent postconsumer recycled plastic;

9 (b) January 1, 2027, through December 31, 2030: No less than 25
10 percent postconsumer recycled plastic;

11 (c) On and after January 1, 2031: No less than 50 percent
12 postconsumer recycled plastic.

13 (2)(a) Beginning in 2021, and every other year thereafter, or at
14 the petition of the plastic packaging industry but not more than
15 annually, the department shall consider whether the minimum
16 postconsumer recycled content requirements established under
17 subsection (1) of this section should be reduced. The department must
18 consider a petition from the plastic packaging industry within 60
19 days of receipt.

20 (b) If the department determines that a minimum postconsumer
21 recycled content requirement should be adjusted, the adjusted rate
22 must be in effect until a new determination is made or upon the
23 expiration of the minimum postconsumer recycled content requirement's
24 effective period, whichever occurs first. The department may not
25 adjust the minimum postconsumer recycled content requirements above
26 the applicable minimum postconsumer recycled content percentage for
27 the applicable compliance period, as established under subsection (1)
28 of this section. For the compliance periods under subsection (1)(b)
29 and (c) of this section, the department may not adjust the minimum
30 postconsumer recycled content requirements below 15 percent. In
31 making a determination to adjust the minimum postconsumer recycled
32 content requirements, the department must at least consider the
33 following:

34 (i) Changes in market conditions, including supply and demand for
35 postconsumer recycled plastics, collection rates, and bale
36 availability;

37 (ii) Recycling rates;

38 (iii) The availability of recycled plastic suitable to meet the
39 minimum postconsumer recycled content requirements;

1 (iv) The capacity of recycling or processing infrastructure;
2 (v) The progress made by plastics packaging manufacturers in
3 meeting the requirements of this section; and

4 (vi) The carbon footprint of the transportation of the recycled
5 resin.

6 (3) The plastic packaging industry or a plastic packaging
7 manufacturer may appeal adjustments to the requirement for minimum
8 postconsumer recycled content as determined under subsection (1) of
9 this section to the pollution control hearings board within 30 days
10 of the department's determination.

11 (4) A plastic packaging producer that does not meet the minimum
12 postconsumer recycled content requirements established in subsection
13 (1) of this section is subject to a fee established in section 5 of
14 this act.

15 NEW SECTION. **Sec. 4.** (1)(a) By March 1, 2022, and annually
16 thereafter, a plastic packaging producer, under penalty of perjury,
17 must report to the department, in pounds and by resin type, the
18 amount of virgin plastic and postconsumer recycled plastic used for
19 plastic packaging sold, offered for sale, or distributed in
20 Washington state in the previous calendar year.

21 (b) The department must post the information reported under this
22 subsection on its website.

23 (2) The department may: (a) Conduct audits and investigations for
24 the purpose of ensuring compliance with this section based on the
25 information reported under subsection (1) of this section; and (b)
26 adopt rules to implement, administer, and enforce the requirements of
27 this chapter.

28 (3) The department shall keep confidential all business trade
29 secrets and proprietary information about manufacturing processes and
30 equipment that the department gathers or becomes aware of through the
31 course of conducting audits or investigations pursuant to this
32 chapter.

33 NEW SECTION. **Sec. 5.** (1) Beginning July 1, 2023, a plastic
34 packaging producer that does not meet the minimum postconsumer
35 recycled content requirements as established under section 3 of this
36 act, based upon the amount in pounds and in the aggregate, is subject
37 to an annual fee.

1 (2) Beginning July 1, 2023, the department may assess fees for
2 violations.

3 (3) (a) The department shall adopt rules to implement a fee that
4 will not exceed \$200 per ton. The department may structure fees to
5 lower fees for producers that achieve partial compliance.

6 (b) From July 1, 2023, through December 31, 2026, the fee
7 structure implemented must be estimated to raise no less than
8 \$40,000,000 per biennium and no more than \$60,000,000 per biennium.

9 (c) From January 1, 2027, through December 31, 2030, the fee
10 structure implemented must be estimated to raise no less than
11 \$30,000,000 per biennium and no more than \$50,000,000 per biennium.

12 (d) On and after January 1, 2031, the fee structure implemented
13 must be estimated to raise no less than \$20,000,000 per biennium and
14 no more than \$40,000,000 per biennium.

15 (e) If the department estimates that fee revenue will fall below
16 the ranges established in this subsection, the department must
17 implement a fee of \$200 per ton and publish an estimate of revenue
18 expected to be raised by the fee in the report required by subsection
19 (4) of this section.

20 (4) Beginning January 1, 2023, the department must publish an
21 annual report containing an annual estimate of the revenue estimated
22 to be raised by the fee, the amounts and quantities of plastic
23 packaging subject to the fee, and the number of producers currently
24 and expected to be in compliance with section 3 of this act.

25 (5) A plastic packaging producer must:

26 (a) Pay to the department assessed fees in quarterly
27 installments; or

28 (b) Arrange an alternative payment schedule subject to the
29 approval of the department.

30 (6) A plastic packaging producer may appeal fees assessed under
31 this section to the pollution control hearings board within 30 days
32 of assessment.

33 (7) A plastic packaging producer shall pay the fees assessed
34 pursuant to this section, as applicable, based on the information
35 reported to the department as required under section 4 of this act in
36 the form and manner prescribed by the department.

37 NEW SECTION. **Sec. 6.** (1) The recycling improvement account is
38 created in the state treasury. All receipts from the fee imposed on
39 plastic packaging under section 5 of this act must be deposited in

1 the account, except that until June 30, 2024, \$1,000,000 must be
2 deposited in the waste reduction, recycling, and litter control
3 account created in RCW 70A.200.140, with the remainder deposited in
4 the recycling improvement account. Moneys in the account may be spent
5 only after appropriation.

6 (2) (a) Twenty-five percent of the expenditures from the account
7 must be used for grants to owners or operators of material recovery
8 facilities that process municipal solid wastes.

9 (b) The primary purpose of these grants is to improve the
10 capability of material recovery facilities to sort and otherwise
11 manage plastic packaging, with a goal of improving recycling
12 infrastructure and the recyclability of plastic packaging.

13 (c) The department may adopt rules or guidelines for the grant
14 program created in this subsection.

15 (3) (a) Seventy-five percent of the expenditures from the account
16 must be used for distributions by the department to cities and
17 counties that are eligible for financial assistance under RCW
18 70A.205.080 for the purposes specified in (b) of this subsection, and
19 for the department's administration of this chapter.

20 (b) (i) Cities and counties must use all funds received under this
21 section for the development and implementation of:

22 (A) Actions or investments to improve recycling infrastructure
23 and the recyclability of plastic packaging through curbside recycling
24 programs;

25 (B) Depots or collection points for plastics not effectively
26 collected or processed through curbside programs; and

27 (C) Solid waste planning, management, regulation, enforcement,
28 technical assistance, and public education required under chapter
29 70A.205 RCW.

30 (ii) In adopting rules governing the distribution of funds under
31 this subsection, the department may incorporate the fund
32 prioritization criteria and process adopted by the department under
33 RCW 70A.205.080. The rules adopted by the department must distribute
34 funds to counties based on the population of the county, after
35 distributing a set minimum amount to each county.

36 (iii) The department shall develop rules governing the
37 distribution of funds under this section in conjunction with an
38 advisory committee convened by the department that includes five
39 members appointed by the Washington association of county solid waste

1 managers and five members appointed by the Washington state
2 association of local public health officials.

3 NEW SECTION. **Sec. 7.** (1) The department must establish a
4 stakeholder advisory committee. The stakeholder advisory committee
5 must recommend to the department, and the department may adopt by
6 rule, exemptions, exceptions, or alternative compliance requirements
7 for the provisions of sections 3 through 5 of this act, that include,
8 but are not limited to:

9 (a) Plastic packaging that is subject to federal requirements,
10 including requirements of the United States food and drug
11 administration;

12 (b) Plastic packaging that is determined by the department,
13 through life-cycle analysis, to exhibit environmentally superior
14 performance when it does not contain postconsumer recycled content or
15 contains smaller amounts of postconsumer recycled content than
16 established by the requirements of section 3 of this act;

17 (c) Plastic packaging from producers with an annual sale or
18 distribution of less than one ton of plastic packaging in Washington;

19 (d) Plastic packaging associated with a single point of retail
20 sale in Washington; or

21 (e) Plastic packaging from women or minority-owned plastic
22 packaging producers, if the department determines such an exemption
23 is in the public interest.

24 (2) The department shall exempt the following plastic packaging
25 from the provisions of sections 3 through 5 of this act:

26 (a) Plastic packaging and food serviceware provided for the
27 purpose of serving prepared serving food: (i) Via a drive-through;
28 (ii) in a packaged form for takeout or takeaway; or (iii) from food
29 trucks, stands, delis, or kiosks that may or may not provide shelter
30 or seating for consumers;

31 (b) Plastic bags subject to postconsumer recycled content
32 requirements under chapter 70A.530 RCW.

33 (3) The stakeholder advisory committee must include at least one
34 person representing each of the following:

35 (a) The department;

36 (b) The department of commerce;

37 (c) The utilities and transportation commission;

38 (d) Cities, including both small and large cities and cities
39 located in urban and rural counties;

1 (e) Counties, including both small and large counties and urban
2 and rural counties;

3 (f) Public sector recycling and solid waste industries;

4 (g) Private sector recycling and solid waste industries;

5 (h) A solid waste collection company regulated under chapter
6 81.77 RCW that provides curbside recycling services;

7 (i) A material recovery facility operator that processes
8 municipal solid waste from curbside recycling programs;

9 (j) A company that provides curbside recycling service pursuant
10 to a municipal contract under RCW 81.77.020;

11 (k) A trade association that represents the private sector solid
12 waste industry;

13 (l) Recycled plastic feedstock users; and

14 (m) Environmental organizations.

15 (4) After the adoption of initial rules to implement this
16 chapter, the department must periodically reengage the stakeholder
17 advisory committee under this section to review the exemptions,
18 exceptions, or alternative compliance requirements adopted by rule
19 under this section.

20 NEW SECTION. **Sec. 8.** (1) A city, town, county, or municipal
21 corporation may not implement local recycled content requirements for
22 plastic packaging that are inconsistent with minimum postconsumer
23 recycled content as required under section 3 of this act.

24 (2) Local laws and ordinances that are inconsistent with, more
25 restrictive than, or exceed the requirements of this chapter, may not
26 be enacted and are preempted.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 42.56
28 RCW to read as follows:

29 Information submitted to the department of ecology under chapter
30 70A.--- RCW (the new chapter created in section 12 of this act), that
31 contains business trade secrets or proprietary information about
32 manufacturing processes and equipment, is exempt from disclosure
33 under this chapter.

34 **Sec. 10.** RCW 70A.200.140 and 2020 c 20 s 1076 are each amended
35 to read as follows:

36 (1) There is hereby created an account within the state treasury
37 to be known as the waste reduction, recycling, and litter control

1 account. Moneys in the account may be spent only after appropriation.
2 Expenditures from the waste reduction, recycling, and litter control
3 account shall be used as follows:

4 (a) Forty percent to the department of ecology, primarily for use
5 by the departments of ecology, natural resources, revenue,
6 transportation, and corrections, and the parks and recreation
7 commission, for litter collection programs under RCW 70A.200.170. The
8 amount to the department of ecology shall also be used for a central
9 coordination function for litter control efforts statewide; to
10 support employment of youth in litter cleanup as intended in RCW
11 70A.200.020, and for litter pick up using other authorized agencies;
12 and for statewide public awareness programs under RCW 70A.200.150(7).
13 The amount to the department shall also be used to defray the costs
14 of administering the funding, coordination, and oversight of local
15 government programs for waste reduction, litter control, recycling,
16 and composting so that local governments can apply one hundred
17 percent of their funding to achieving program goals. The amount to
18 the department of revenue shall be used to enforce compliance with
19 the litter tax imposed in chapter 82.19 RCW;

20 (b) (i) Twenty percent to the department for local government
21 funding programs for waste reduction, litter control, recycling
22 activities, and composting activities by cities and counties under
23 RCW 70A.200.190, to be administered by the department of ecology;
24 (ii) any unspent funds under (b) (i) of this subsection may be used to
25 create and pay for a matching fund competitive grant program to be
26 used by local governments for the development and implementation of
27 contamination reduction and outreach plans for inclusion in
28 comprehensive solid waste management plans or by local governments
29 and nonprofit organizations for local or statewide education programs
30 designed to help the public with litter control, waste reduction,
31 recycling, and composting of primarily the products taxed under
32 chapter 82.19 RCW. Recipients under this subsection include programs
33 to reduce wasted food and food waste that are designed to achieve the
34 goals established in RCW 70A.205.715(1) and that are consistent with
35 the plan developed in RCW 70A.205.715(3). Grants must adhere to the
36 following requirements: (A) No grant may exceed sixty thousand
37 dollars; (B) grant recipients shall match the grant funding allocated
38 by the department by an amount equal to twenty-five percent of
39 eligible expenses. A local government's share of these costs may be
40 met by cash or contributed services; (C) the obligation of the

1 department to make grant payments is contingent upon the availability
2 of the amount of money appropriated for this subsection (1)(b); and
3 (D) grants are managed under the guidelines for existing grant
4 programs; ~~((and))~~

5 (c) ~~((Forty))~~ Beginning June 30, 2021, until June 30, 2022:

6 (i) Four percent to the department of ecology to implement and
7 enforce chapter 70A.--- RCW (the new chapter created in section 12 of
8 this act);

9 (ii) Thirty-six percent to the department of ecology to: ~~((+i+))~~

10 (A) Implement activities under RCW 70A.200.150 for waste reduction,
11 recycling, and composting efforts; ~~((+ii+))~~ (B) provide technical
12 assistance to local governments and commercial businesses to increase
13 recycling markets and recycling and composting programs primarily for
14 the products taxed under chapter 82.19 RCW designed to educate
15 citizens about waste reduction, litter control, and recyclable and
16 compostable products and programs; ~~((+iii+))~~ (C) increase access to
17 waste reduction, composting, and recycling programs, particularly for
18 food packaging and plastic bags and appropriate composting
19 techniques; and ~~((+iv+))~~ (D) for programs to reduce wasted food and
20 food waste that are designed to achieve the goals established in RCW
21 70A.205.715(1) and that are consistent with the plan developed in RCW
22 70A.205.715(3); and

23 (d) After June 30, 2022, 40 percent to the department of ecology:

24 (i) To implement activities under RCW 70A.200.150 for waste
25 reduction, recycling, and composting efforts; (ii) to provide
26 technical assistance to local governments and commercial businesses
27 to increase recycling markets and recycling and composting programs
28 primarily for the products taxed under chapter 82.19 RCW designed to
29 educate citizens about waste reduction, litter control, and
30 recyclable and compostable products and programs; (iii) to increase
31 access to waste reduction, composting, and recycling programs,
32 particularly for food packaging and plastic bags and appropriate
33 composting techniques; and (iv) for programs to reduce wasted food
34 and food waste that are designed to achieve the goals established in
35 RCW 70A.205.715(1) and that are consistent with the plan developed in
36 RCW 70A.205.715(3).

37 (2) All taxes imposed in RCW 82.19.010 and fines and bail
38 forfeitures collected or received pursuant to this chapter shall be
39 deposited in the waste reduction, recycling, and litter control

1 account and used for the programs under subsection (1) of this
2 section.

3 (3) Not less than five percent and no more than ten percent of
4 the amount appropriated into the waste reduction, recycling, and
5 litter control account every biennium shall be reserved for capital
6 needs, including the purchase of vehicles for transporting crews and
7 for collecting litter and solid waste. Capital funds shall be
8 distributed among state agencies and local governments according to
9 the same criteria provided in RCW 70A.200.170 for the remainder of
10 the funds, so that the most effective waste reduction, litter
11 control, recycling, and composting programs receive the most funding.
12 The intent of this subsection is to provide funds for the purchase of
13 equipment that will enable the department to account for the greatest
14 return on investment in terms of reaching a zero litter goal.

15 (4) Funds in the waste reduction, recycling, and litter control
16 account, collected under chapter 82.19 RCW, must be prioritized for
17 the products identified under RCW 82.19.020 solely for the purposes
18 of recycling, composting, and litter collection, reduction, and
19 control programs.

20 **Sec. 11.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035
21 are 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 70A.15 RCW,
26 local health departments, the department of natural resources, the
27 department of fish and wildlife, the parks and recreation commission,
28 and authorized public entities described in chapter 79.100 RCW:

29 (a) Civil penalties imposed pursuant to RCW 18.104.155,
30 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
31 70A.515.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
32 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

33 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
34 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
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
38 by the department or any air authority in the exercise of its
39 jurisdiction, including the issuance or termination of a waste

1 disposal permit, the denial of an application for a waste disposal
2 permit, the modification of the conditions or the terms of a waste
3 disposal permit, or a decision to approve or deny an application for
4 a solid waste permit exemption under RCW 70A.205.260.

5 (d) Decisions of local health departments regarding the grant or
6 denial of solid waste permits pursuant to chapter 70A.205 RCW.

7 (e) Decisions of local health departments regarding the issuance
8 and enforcement of permits to use or dispose of biosolids under RCW
9 70A.226.090.

10 (f) Decisions of the department regarding waste-derived
11 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
12 decisions of the department regarding waste-derived soil amendments
13 under RCW 70A.205.145.

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

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

23 (i) Decisions of the department of natural resources, the
24 department of fish and wildlife, and the department that are
25 reviewable under chapter 76.09 RCW, and the department of natural
26 resources' appeals of county, city, or town objections under RCW
27 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, to issue a stop work order, to issue a notice to
33 comply, to issue a civil penalty, or to issue a notice of intent to
34 disapprove applications.

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

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

1 (n) Decisions of the department of ecology that are appealable
2 under sections 3 and 5 of this act, to set minimum postconsumer
3 recycled content for plastic packaging and to assess fees.

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

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

8 (b) Hearings conducted by the department pursuant to RCW
9 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
10 70A.15.3110, and 90.44.180.

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

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

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

18 NEW SECTION. **Sec. 12.** Sections 1 through 8 of this act
19 constitute a new chapter in Title 70A RCW.

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