

2SHB 2049 - H AMD 996

By Representative Dye

NOT CONSIDERED 03/07/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 **"PART 1**

4 **INTENT**

5 NEW SECTION. **Sec. 101.** INTENT. (1) The legislature finds that:

6 (a) Washington has been a leader in recycling policy, reaching
7 the goal of 50 percent recycling set by the legislature in RCW
8 70A.205.005. The legislature further finds that, since meeting the
9 state's goal to achieve a 50 percent recycling rate, global market
10 conditions have caused the recycling rate to fall below 50 percent.

11 (b) 88 percent of Washington residents living in single-family
12 homes and 77 percent living in multifamily residences have access to
13 curbside recycling services through a robust regulatory structure
14 that ensures equal access to services at affordable rates.

15 (c) The investments in infrastructure by Washington companies has
16 led to the development of materials sorting and processing superior
17 to most other states.

18 (d) Contamination in the recycling stream is a major impediment
19 to higher recovery rates.

20 (e) Washington should maintain the successful public-private
21 partnership between state, local government, and solid waste and
22 recycling service providers. The legislature does not intend to
23 diminish or displace the primary role of the utilities and
24 transportation commission and local governments in regulating or
25 contracting directly with service providers for the curbside
26 collection of residential recyclables. Local governments maintain
27 their existing authority to collect, contract for collection with
28 solid waste and recycling service providers, or defer to solid waste
29 collection services regulated by the utilities and transportation
30 commission.

31 (2) Therefore, it is the intent of the legislature to implement
32 proven strategies to address these challenges, including:

1 (a) A robust needs assessment unique to Washington state to
2 determine costs and investments necessary to achieve a 60 percent
3 overall recycling rate for packaging; and

4 (b) The expansion of the successful recycled content requirements
5 to ensure more materials are manufactured with postconsumer material.

6 **PART 2**
7 **NEEDS ASSESSMENT**

8 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 requires otherwise.

11 (1) "Consumable product" means a commodity that is intended to be
12 used and not disposed of.

13 (2) "Contaminant" means a material set out for curbside recycling
14 collection that is not on the list of materials accepted for
15 recycling collection by a recycling collection program.

16 (3) "Contamination" means the presence of one or more
17 contaminants in a recycling collection or commodity stream in an
18 amount or concentration that negatively impacts the value of the
19 material or negatively impacts a processor's ability to sort that
20 material.

21 (4) "Covered product" means packaging and paper products sold or
22 supplied to consumers for personal, noncommercial use and disposed of
23 through residential curbside or drop-off site collection systems.

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

25 (6) "Glass" means a covered product made of soda lime glass.

26 (7) "Material category" means a group of covered products that
27 have similar properties such as chemical composition, shape, or other
28 characteristics.

29 (8) "Overburdened community" means an overburdened community
30 identified and prioritized by the department under RCW
31 70A.02.050(1)(a).

32 (9)(a) "Packaging" means a material, substance, or object that
33 is:

34 (i) Used to protect, contain, transport, or serve an item;

35 (ii) Sold or supplied to consumers expressly for the purpose of
36 protecting, containing, transporting, or serving items;

37 (iii) Attached to an item or its container for the purpose of
38 marketing or communicating information about the item;

1 (iv) Supplied at the point of sale to facilitate the delivery of
2 the item; or

3 (v) Supplied to or purchased by consumers expressly for the
4 purpose of facilitating food or beverage consumption that is
5 ordinarily discarded by consumers after a single use or short-term
6 use, whether or not it could be reused.

7 (b) "Packaging" does not include:

8 (i) Materials intended to be used for the long-term storage or
9 protection of a durable product, that is intended to transport,
10 protect, or store the durable product on an ongoing basis, and that
11 can be expected to be usable for that purpose for a period of at
12 least five years;

13 (ii) For purposes of this chapter only, materials used to package
14 pesticide products regulated by the federal insecticide, fungicide,
15 and rodenticide act, 7 U.S.C. Sec. 136 et seq., that are in direct
16 contact with the regulated product. This exemption does not include
17 products regulated by the United States food and drug administration;

18 (iii) Liquefied petroleum gas containers that are designed to be
19 refilled and reused;

20 (iv) (A) Packaging for drugs that are used for animal medicines
21 including parasiticide products for animals; and

22 (B) Packaging for products intended for animals that are
23 regulated as animal drugs, biologics, parasiticides, medical devices,
24 or diagnostics used to treat, or administered to, animals under the
25 federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq., the
26 federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec.
27 136 et seq., or the federal virus-serum-toxin act, 21 U.S.C. Sec. 151
28 et seq., as amended;

29 (v) Packaging for products that are regulated as a medical
30 device, dietary supplement, or drug by the United States food and
31 drug administration under the federal food, drug, and cosmetic act,
32 21 U.S.C. Sec. 321 et seq. or products that are regulated as a
33 biologic or vaccine by the federal food and drug administration under
34 the public health service act, 42 U.S.C. Sec. 201 et seq.;

35 (vi) Packaging related to containers of architectural paint that
36 has been collected by a stewardship organization under the program
37 established in chapter 70A.515 RCW;

38 (vii) Packaging used to contain hazardous or flammable products
39 classified by the 2012 federal occupational safety and health
40 administration hazard communication standard (29 C.F.R. 1910.1200);

1 (viii) Packaging products used by entities or individuals covered
2 under North American industry classification system codes 1151, 3253,
3 42491, or 44424;

4 (ix) Packaging for perishable food that may spoil or otherwise
5 become unfit for human consumption because of its nature or type of
6 physical condition including, but not limited to, fresh and processed
7 meats, poultry, seafood, dairy products, eggs in the shells, and
8 fresh fruit and vegetables.

9 (10) "Paper product" means paper sold or supplied including
10 flyers, brochures, booklets, catalogs, magazines, and all other paper
11 materials except for: (a) Bound books; (b) conservation grade and
12 archival grade paper; (c) newspapers; (d) paper designed for use in
13 building construction; and (e) paper products that, by any common and
14 foreseeable use, could reasonably be anticipated to become unsafe or
15 unsanitary to handle.

16 (11)(a) "Producer" means the following person responsible for
17 compliance with covered product registration and reporting
18 requirements under this chapter for a covered product sold, offered
19 for sale, or distributed in or into this state:

20 (i) If the covered product is sold with the manufacturer's own
21 brand or lacks identification of a brand, the producer is the person
22 who manufactures the covered product;

23 (ii) If the covered product is manufactured by a person other
24 than the brand owner, the producer is the person who is the licensee
25 of a brand or trademark under which a covered product is sold,
26 offered for sale, or distributed in or into this state, whether or
27 not the trademark is registered in this state, unless the
28 manufacturer or brand owner of the covered product has agreed to
29 accept responsibility under this chapter; or

30 (iii) If there is no person described in (a)(i) and (ii) of this
31 subsection over whom the state can constitutionally exercise
32 jurisdiction, the producer is the person who imports or distributes
33 the covered product in or into the state.

34 (b) A person is the "producer" of a covered product sold, offered
35 for sale, or distributed in or into this state, as defined in (a)(i)
36 through (iii) of this subsection, except where another person has
37 mutually signed an agreement with a producer as defined in (a)(i)
38 through (iii) of this subsection that contractually assigns
39 responsibility to the person as the producer, and the person has

1 joined a registered producer responsibility organization as the
2 responsible producer for that covered product under this chapter.

3 (c) "Producer" does not include:

4 (i) Government agencies, municipalities, or other political
5 subdivisions of the state;

6 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
7 social welfare organizations; or

8 (iii) De minimis producers that annually sell, offer for sale,
9 distribute, or import in or into the country for sale in Washington:

10 (A) Less than one ton of covered products each year; or

11 (B) That has a global gross revenue of less than \$5,000,000 for
12 the most recent fiscal year of the organization. The department shall
13 calculate an adjusted rate to maintain the small business exemption
14 by the rate of inflation. The adjusted rate must be calculated to the
15 nearest cent using the consumer price index for urban wage earners.
16 Each adjusted rate calculated under this subsection takes effect on
17 the following January 1st.

18 (12) "Vulnerable population" has the same meaning as in RCW
19 70A.02.010.

20 NEW SECTION. **Sec. 202.** ACTIVITIES TO SUPPORT FUTURE INCREASES
21 IN RECOVERY RATES AND RATES STUDY. (1) To inform the future
22 development of strategies to increase recovery rates consistent with
23 the goals established in subsection (2) of this section, the
24 department must:

25 (a) Identify a statewide list of materials suitable for curbside
26 collection services and a statewide list of materials suitable for
27 drop-off collection, consistent with section 203 of this act, to be
28 completed by October 1, 2025; and

29 (b) Complete a statewide needs assessment that must use the
30 recycling rates from the department's *December 2023 Washington*
31 *Recycling, Reuse, and Source Reduction Target Study and Community*
32 *Input Process*, and be carried out by a third-party consultant
33 selected by the department, consistent with section 204 of this act,
34 and completed by October 1, 2026.

35 (2) For purposes of implementing this chapter, the department
36 must, where appropriate, use and rely on the department's *December*
37 *2023 Washington Recycling, Reuse, and Source Reduction Target Study*
38 *and Community Input Process*.

1 NEW SECTION. **Sec. 203.** CURBSIDE AND DROP-OFF RECYCLABLE
2 MATERIALS COLLECTION LISTS FOR NEEDS ASSESSMENT. (1) By October 1,
3 2025, the department must develop and publish a:

4 (a) List of recyclable materials suitable for curbside collection
5 from residents in single-family and multifamily residences; and

6 (b) Separate list of materials suitable for residential drop-off
7 collection.

8 (2) The initial list of materials suitable for curbside
9 collection developed and published under this section must include
10 the following materials:

11 (a) Newspaper;

12 (b) Paperboard and chipboard;

13 (c) Loose paper;

14 (d) Corrugated cardboard;

15 (e) Magazines;

16 (f) Envelopes;

17 (g) Aluminum cans;

18 (h) Tin or steel cans;

19 (i) High density polyethylene plastic containers; and

20 (j) Polyethylene terephthalate containers.

21 (3) The initial list of materials suitable for drop-off
22 residential collection must include the following materials:

23 (a) Glass; and

24 (b) Flexible plastic.

25 (4) In addition to the materials identified under subsections (2)
26 and (3) of this section, the department may identify additional
27 materials for inclusion on a list or remove materials from inclusion
28 on a list based on consultation with the advisory committee
29 established in section 205 of this act, and after considering the
30 following factors:

31 (a) The stability, maturity, accessibility, and viability of
32 responsible end markets;

33 (b) Economic factors;

34 (c) Environmental factors from a life-cycle perspective;

35 (d) The material's compatibility with existing recycling
36 infrastructure;

37 (e) The amount of the material available;

38 (f) The ability for waste generators to easily identify and
39 properly prepare the material;

40 (g) The practicalities of sorting and storing the material;

- 1 (h) Contamination;
- 2 (i) Environmental health and safety considerations; and
- 3 (j) The anticipated yield loss for the material during the
- 4 recycling process.

5 NEW SECTION. **Sec. 204.** STATEWIDE NEEDS ASSESSMENT. (1) The
6 statewide needs assessment must be consistent with the following
7 requirements:

8 (a) The final scope of the statewide needs assessment must be
9 determined after considering comments and recommendations from
10 stakeholders, each jurisdiction planning under chapter 70A.205 RCW,
11 and the advisory committee established in section 205 of this act;
12 and

13 (b) Stakeholders, jurisdictions planning under chapter 70A.205
14 RCW, and the advisory committee must have the opportunity to review
15 and comment on the draft statewide needs assessment at least 90 days
16 prior to its completion. The advisory committee must have the
17 opportunity to review drafts of the needs assessment and accompanying
18 data used in the needs assessment.

19 (2) The statewide needs assessment must be:

20 (a) Informed by the findings and recommendations of the 2023
21 performance rates study identified in section 202 of this act and
22 rates and other comments suggested by stakeholders and the advisory
23 committee;

24 (b) Limited to covered products collected from residents in
25 single-family and multifamily residences included on the list
26 developed and published by the department in section 203 of this act;

27 (c) Completed only after individual consultation with each
28 jurisdiction planning under chapter 70A.205 RCW; and

29 (d) Accepted from the selected consultant as complete by the
30 department.

31 (3) The statewide needs assessment must:

32 (a) For each jurisdiction planning under chapter 70A.205 RCW,
33 evaluate the capacity, costs, gaps, and needs for the following
34 factors necessary to achieve performance rate recommendations
35 identified under section 202 of this act:

36 (i) Evaluate what services related to the requirements of this
37 chapter are currently being delivered in each county and city
38 planning under chapter 70A.205 RCW and what the costs are for those
39 existing services;

1 (A) Availability and types of recycling services for covered
2 products for residents in single-family and multifamily residences,
3 including whether current services are considered residential or
4 commercial and whether any gaps, costs, or needs are specific to
5 either commercial or residential customer service;

6 (B) The current methods and infrastructure for serving residents,
7 including curbside recycling service areas and material drop-off
8 locations;

9 (C) Any densely populated areas within each jurisdiction in which
10 curbside recycling services for covered products identified by the
11 department on the list developed and published under section 203 of
12 this act are not available or are only partially available;

13 (D) Any areas within each jurisdiction where curbside garbage
14 collection services are offered to residents in single-family and
15 multifamily residences but curbside recycling services are not
16 offered;

17 (ii) Evaluate what new or expanded services and infrastructure
18 are needed in each county and city planning under chapter 70A.205 RCW
19 to meet the target performance rates and what the anticipated costs
20 are for those additional services and infrastructure;

21 (iii) Education and outreach activities, which may include
22 digital mediums on packaging;

23 (iv) Availability and performance of collection, transport, and
24 processing capacity and infrastructure, including consideration of
25 material quality and contamination;

26 (v) Necessary capital investments to existing reuse and recycling
27 infrastructure, and how to maximize the use of existing
28 infrastructure;

29 (b) Compile information related to actual costs for curbside
30 collection services, drop-off collection services, and other
31 information relevant to the funding requirements to achieve
32 performance rates, including costs for various service methods
33 recommended by stakeholders during the study scoping process;

34 (c) Estimate the total costs of investments necessary to reach
35 target rates, within each jurisdiction, as well as ongoing program
36 costs related to labor, equipment, and maintenance. Cost factors and
37 variables to be considered in the estimates include:

38 (i) Population size and density of a local jurisdiction;

39 (ii) Types of households serviced and collection method used;

- 1 (iii) Distance from a local jurisdiction to the nearest recycling
2 facility;
- 3 (iv) Whether a jurisdiction pays for transportation and sorting
4 of collected materials and whether it receives a commodity value from
5 processed materials;
- 6 (v) Geographic location or other variables contributing to
7 regional differences in costs;
- 8 (vi) Cost increases over time; and
- 9 (vii) Any other factors as determined to be necessary by the
10 department, with input from stakeholders;
- 11 (d) (i) Identify cost factors and other variables to be considered
12 in the development of funding estimates for government entities for
13 any services other than curbside collection to be carried out by
14 government entities that may be needed to achieve performance rates
15 developed under section 202 of this act;
- 16 (ii) Identify methods to consider greenhouse gas emissions and
17 other environmental outcomes associated with potential expansions of
18 curbside recycling services to rural or sparsely populated areas;
- 19 (e) Compile relevant information to be considered in the
20 development of criteria by the department to determine whether a
21 covered product is recyclable, reusable, or compostable through
22 Washington's curbside recycling collection system. The relevant
23 information to be compiled may include whether covered product
24 materials are:
- 25 (i) Or may be, collected, separated, and processed in sufficient
26 quantity and quality into a marketable feedstock that can be used in
27 the production of new products; or
- 28 (ii) Designed in a way that is problematic for reuse, recycling,
29 or composting;
- 30 (f) Evaluate how the state's existing recycling system can be
31 improved in a socially just manner as it relates to activities
32 required under this chapter. The assessment must:
- 33 (i) Include meaningful consultation with overburdened communities
34 and vulnerable populations;
- 35 (ii) Determine conditions and make recommendations including, at
36 minimum:
- 37 (A) Improving access to the recycling system for women and
38 minority individuals;
- 39 (B) The sufficiency of local government requirements related to
40 multifamily recycling services and their implementation;

1 (C) Identification of activities that negatively
2 disproportionately impact any community and in particular
3 overburdened communities and vulnerable populations, including new
4 fees, costs, or deposits;

5 (D) Improving the sufficiency of recycling education and outreach
6 programs relative to desired socially just management outcomes;

7 (E) Recommendations for improving socially just management
8 practices and outcomes in the state's recycling system; and

9 (F) Evaluate the extent to which covered products contribute to
10 litter and marine debris. The assessment should draw on available
11 data, assess gaps, and identify strategies for improving prevention
12 and cleanup of litter and marine debris from covered products;

13 (g) Compile information from available data sources on the
14 presence of toxic substances in covered products and their potential
15 negative impacts on reuse, recycling, and composting systems. The
16 information compiled is intended to inform the development of
17 ecomodulation factors that incentivize the reduction of toxic
18 substances that have potentially negative impacts when covered
19 products are managed through reuse, recycling, and composting
20 systems; and

21 (h) Conduct voluntary interviews with service providers of
22 curbside recycling services or recycling processing services within a
23 jurisdiction on costs for additional infrastructure, vehicles, staff,
24 equipment, and other investments to achieve performance rates
25 developed under section 202 of this act.

26 NEW SECTION. **Sec. 205.** ADVISORY COMMITTEE. (1) An advisory
27 committee is established.

28 (2) The advisory committee consists of members appointed by the
29 department as follows:

30 (a) Four representatives of local governments representing
31 geographic areas across the state, including two representatives of
32 counties and two representatives of cities, each with one
33 representative of urban communities and one representative of rural
34 communities;

35 (b) One representative of tribal or indigenous solid waste
36 services organizations;

37 (c) One representative of special purpose districts involved in
38 activities related to the end-of-life management of solid waste;

1 (d) Two representatives of community-based organizations whose
2 mission is to serve the interests of overburdened communities and
3 vulnerable populations;

4 (e) Two representatives of environmental nonprofit organizations;

5 (f) One owner or operator of a small business that is not
6 eligible for representation under (g), (h), or (i) of this
7 subsection;

8 (g) Six representatives of the recycling industry, including
9 local governments' service providers, solid waste collection
10 companies or associations, material recovery facilities, or other
11 processing facilities;

12 (h) Four representatives of producers of covered products or
13 producer trade associations representing different types of covered
14 products;

15 (i) Two representatives of packaging suppliers that are not
16 producers as defined under this chapter representing different
17 material categories; and

18 (j) One representative of a retail establishment.

19 (3) Advisory committee members must be appointed by the director
20 of the department by September 1, 2025. In appointing members, the
21 department shall:

22 (a) Appoint members that, to the greatest extent practicable,
23 represent diversity in race, ethnicity, age, and gender, urban and
24 rural areas, and different regions of the state; and

25 (b) Consider recommendations for appointments from relevant
26 represented groups or associations and from individuals interested in
27 participating on the advisory committee.

28 (4)(a) The terms of initial appointments must be staggered to
29 two-year and three-year appointments, with subsequent terms of three
30 years. Members are eligible for reappointment.

31 (b) If there is a vacancy for any reason, the department shall
32 make an appointment to become effective immediately for the unexpired
33 term.

34 (5) The advisory committee shall meet at least once every three
35 months at times and places specified by the department. The advisory
36 committee may also meet at other times and places, including
37 virtually, specified by the department or by a call of a majority of
38 the committee members, as necessary, to carry out the duties of the
39 advisory committee.

1 (6) (a) The department shall provide staff support and
2 facilitation as necessary for the advisory committee to carry out its
3 duties.

4 (b) The department may select an impartial, third-party
5 facilitator to convene and provide administrative support to the
6 advisory committee.

7 (7) The duties of the advisory committee include the following:

8 (a) Advise and make recommendations to the department on the
9 lists developed and published by the department under section 203 of
10 this act;

11 (b) Advise and make recommendations to the department on the
12 scope of the statewide needs assessment under section 204 of this
13 act; and

14 (c) Review and comment on draft statewide needs assessments prior
15 to their completion.

16 (8) Advisory committee members that are representatives of tribes
17 or tribal and indigenous services organizations or community-based
18 and environmental nonprofit organizations must, if requested, be
19 compensated and reimbursed in accordance with RCW 43.03.050,
20 43.03.060, and 43.03.220.

21 PART 3

22 ESTABLISHING POSTCONSUMER RECYCLED CONTENT

23 REQUIREMENTS

24 NEW SECTION. **Sec. 301.** A new section is added to chapter
25 70A.245 RCW to read as follows:

26 POSTCONSUMER RECYCLED CONTENT FOR POLYPROPYLENE TUBS. (1) A
27 producer of polypropylene tubs must meet the following annual minimum
28 postconsumer recycled content percentage on average for the total
29 quantity of polypropylene tubs, by weight, that are sold, offered for
30 sale, or distributed in or into Washington by the producer effective:

31 (a) Products manufactured between January 1, 2030, through
32 December 31, 2034: No less than 10 percent postconsumer recycled
33 content plastic by weight; and

34 (b) Products manufactured on and after January 1, 2035: No less
35 than 30 percent postconsumer recycled content plastic by weight.

36 (2) For polypropylene tubs in direct contact with food or edible
37 products:

1 (a) Products manufactured between January 1, 2034, through
2 December 31, 2038: No less than 10 percent postconsumer recycled
3 content plastic by weight; and

4 (b) Products manufactured on and after January 1, 2039: No less
5 than 30 percent postconsumer recycled content plastic by weight.

6 (3) The department may extend these dates by five years for all
7 producers if the department determines inadequate availability of
8 recycled material or a substantial disruption in the supply of the
9 recycled material.

10 (a) A manufacturer may pay a \$1,000 waiver fee, unless exempt,
11 and apply to the department for a waiver from the postconsumer
12 recycled content requirements established pursuant to this act. De
13 minimis producers that apply for a waiver under this subsection are
14 not subject to a fee.

15 (b) The department may grant a waiver pursuant to this section if
16 the manufacturer demonstrates, and the department finds, in writing,
17 that any of the following are applicable:

18 (i) The manufacturer cannot achieve the postconsumer recycled
19 content requirements and remain in compliance with applicable rules
20 and regulations adopted by the United States food and drug
21 administration, or any other state or federal law, rule, or
22 regulation;

23 (ii) It is not technically feasible for the manufacturer to
24 achieve the postconsumer recycled content requirements; or

25 (iii) The manufacturer cannot comply with the postconsumer
26 recycled content requirements due to inadequate availability of
27 recycled material or a substantial disruption in the supply of
28 recycled material.

29 NEW SECTION. **Sec. 302.** A new section is added to chapter
30 70A.245 RCW to read as follows:

31 POSTCONSUMER RECYCLED CONTENT FOR SINGLE-USE PLASTIC CUPS. A
32 producer of single-use plastic cups made of polyethylene
33 terephthalate, polypropylene, or polystyrene must meet the following
34 annual minimum postconsumer recycled content percentage on average
35 for the total quantity of single-use plastic cups, by weight, that
36 are sold, offered for sale, or distributed in or into Washington by
37 the producer effective:

38 (1) For polypropylene single-use plastic cups:

1 (a) Products manufactured between January 1, 2031, through
2 December 31, 2032: No less than 15 percent postconsumer recycled
3 content plastic by weight; and

4 (b) Products manufactured on and after January 1, 2033: No less
5 than 25 percent postconsumer recycled content plastic by weight.

6 (2) For polyethylene terephthalate and polystyrene single-use
7 plastic cups:

8 (a) Products manufactured between January 1, 2033, through
9 December 31, 2034: No less than 20 percent postconsumer recycled
10 content plastic by weight; and

11 (b) Products manufactured on and after January 1, 2035: No less
12 than 30 percent postconsumer recycled content plastic by weight.

13 NEW SECTION. **Sec. 303.** A new section is added to chapter
14 70A.245 RCW to read as follows:

15 POSTCONSUMER RECYCLED CONTENT FOR POLYETHYLENE TEREPHTHALATE
16 THERMOFORM PLASTIC CONTAINERS. A producer of a polyethylene
17 terephthalate thermoform plastic container must meet the following
18 annual minimum postconsumer recycled content percentage on average
19 for the total quantity of polyethylene terephthalate thermoform
20 plastic containers, by weight, that are sold, offered for sale, or
21 distributed in or into Washington by the producer effective:

22 (1) For packaging for consumable goods:

23 (a) Products manufactured between January 1, 2030, through
24 December 31, 2034: No less than 10 percent postconsumer recycled
25 content plastic by weight; and

26 (b) Products manufactured on and after January 1, 2035: No less
27 than 30 percent postconsumer recycled content plastic by weight.

28 (2) For packaging for consumable goods in direct contact with
29 food or edible products:

30 (a) Products manufactured between January 1, 2034, through
31 December 31, 2038: No less than 10 percent postconsumer recycled
32 content plastic by weight; and

33 (b) Products manufactured on and after January 1, 2039: No less
34 than 30 percent postconsumer recycled content plastic by weight.

35 (3) (a) Except as provided in (b) of this subsection, for
36 packaging used for durable goods: On and after January 1, 2033, no
37 less than 30 percent postconsumer recycled content plastic by weight.

1 (b) Packaging designed to accompany a durable good where that
2 durable good model is designed prior to the effective date of the
3 requirement in (a) of this subsection is exempt.

4 (4) The department may extend these dates by five years for all
5 producers if the department determines inadequate availability of
6 recycled material or a substantial disruption in the supply of the
7 recycled material.

8 (a) A manufacturer may pay a \$1,000 waiver fee, unless exempt,
9 and apply to the department for a waiver from the postconsumer
10 recycled content requirements established pursuant to this act. De
11 minimis producers that apply for a waiver under this subsection are
12 not subject to a fee.

13 (b) The department may grant a waiver pursuant to this section if
14 the manufacturer demonstrates, and the department finds, in writing,
15 that any of the following are applicable:

16 (i) The manufacturer cannot achieve the postconsumer recycled
17 content requirements and remain in compliance with applicable rules
18 and regulations adopted by the United States food and drug
19 administration, or any other state or federal law, rule, or
20 regulation;

21 (ii) It is not technically feasible for the manufacturer to
22 achieve the postconsumer recycled content requirements; or

23 (iii) The manufacturer cannot comply with the postconsumer
24 recycled content requirements due to inadequate availability of
25 recycled material or a substantial disruption in the supply of
26 recycled material.

27 NEW SECTION. **Sec. 304.** A new section is added to chapter
28 70A.245 RCW to read as follows:

29 DEPARTMENT'S DUTIES AND LIMITATIONS. (1) The department must
30 ensure that any rules adopted pursuant to this chapter consider
31 guidelines, and do not conflict with regulations, issued by the
32 United States food and drug administration and the United States
33 department of agriculture, and consider requirements imposed by other
34 Washington state agencies including, but not limited to, the
35 department of agriculture.

36 (2) The department may not impose any requirement including, but
37 not limited to, a postconsumer recycled content requirement, in
38 direct conflict with a federal law or regulation or the requirements

1 necessary to comply with a federal law or regulation including, but
2 not limited to:

3 (a) Laws or regulations covering tamper-evident packaging
4 pursuant to 21 C.F.R. Sec. 211.132;

5 (b) Laws or regulations covering child-resistant packaging
6 pursuant to 16 C.F.R. Sec. 1700.1, et seq.;

7 (c) Regulations, rules, or guidelines issued by the United States
8 department of agriculture or the United States food and drug
9 administration related to packaging agricultural commodities; and

10 (d) Requirements for microbial contamination, structural
11 integrity, or safety of packaging where no viable recyclable or
12 compostable packaging that can meet the requirements exists, pursuant
13 to: (i) The federal food, drug, and cosmetic act (21 U.S.C. Sec. 301,
14 et seq.); (ii) 21 U.S.C. Sec. 2101, et seq.; (iii) the federal food
15 and drug administration food safety modernization act (21 U.S.C. Sec.
16 2201, et seq.); (iv) the federal poultry products inspection act (21
17 U.S.C. Sec. 451, et seq.); (v) the federal meat inspection act (21
18 U.S.C. Sec. 601, et seq.); or (vi) the federal egg products
19 inspection act (21 U.S.C. Sec. 1031, et seq.).

20 (3) The department may not impose any requirement including, but
21 not limited to, a postconsumer recycled content requirement, on
22 medical devices, drugs, or dietary supplements as defined at 21
23 U.S.C. Sec. 321 et seq.

24 **PART 4**
25 **AMENDMENTS TO EXISTING POSTCONSUMER RECYCLED**
26 **CONTENT REQUIREMENTS**

27 **Sec. 401.** RCW 70A.245.010 and 2021 c 313 s 2 are each amended to
28 read as follows:

29 The definitions in this section apply throughout this chapter
30 unless the context clearly requires otherwise.

31 (1) ~~(a)~~ "Beverage" means (~~beverages identified in (a) through (f)~~
32 ~~of this subsection,~~) liquid products intended for human or animal
33 consumption, and in a quantity more than or equal to two fluid ounces
34 and less than or equal to one gallon:

- 35 ~~((a))~~ (i) Water and flavored water;
36 ~~((b))~~ (ii) Beer or other malt beverages;
37 ~~((c))~~ (iii) Wine;
38 ~~((d))~~ (iv) Distilled spirits;

1 ~~((e))~~ (v) Mineral water, soda water, and similar carbonated
2 soft drinks; ~~((and~~
3 ~~(f) Any beverage other than those specified in (a) through (e) of~~
4 ~~this subsection, except))~~ (vi) Dairy milk; and
5 (vii) Any other beverage identified by the department by rule.

6 (b) Beverage does not include infant formula as defined in 21
7 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec.
8 360ee(b)(3), or fortified oral nutritional supplements used for
9 persons who require supplemental or sole source nutrition to meet
10 nutritional needs due to special dietary needs directly related to
11 cancer, chronic kidney disease, diabetes, malnutrition, and failure
12 to thrive, as those terms are defined by the international
13 classification of diseases, 10th revision, or other medical
14 conditions as determined by the department.

15 (c) For any multimaterial beverage container qualifying under
16 this act, postconsumer recycled content requirements only apply to
17 the weight of the plastic components of the container, not overall
18 container weight.

19 (2) "Beverage manufacturing industry" means an association that
20 represents beverage producers.

21 (3) "Condiment packaging" means packaging used to deliver single-
22 serving condiments to customers. Condiment packaging includes, but is
23 not limited to, single-serving packaging for ketchup, mustard,
24 relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly,
25 jam, and soy sauce.

26 (4) (a) "Covered product" means an item in one of the following
27 categories subject to minimum postconsumer recycled content
28 requirements:

29 (i) Plastic trash bags;

30 (ii) Household cleaning and personal care products that use
31 plastic household cleaning and personal care product containers;
32 ~~((and))~~

33 (iii) Beverages that use plastic beverage containers;

34 (iv) Plastic tubs;

35 (v) Thermoform plastic polyethylene terephthalate containers; and

36 (vi) Single-use polypropylene, polyethylene terephthalate, or
37 polystyrene cups.

38 (b) "Covered product" does not include any type of container or
39 bag for which the state is preempted from regulating content of the
40 container material or bag material under federal law.

1 (5) "Dairy milk" means a beverage that designates milk as the
2 predominant (first) ingredient in the ingredient list on the
3 container's label.

4 (6) "Department" means the department of ecology.

5 (7) "Expanded polystyrene" means blown polystyrene and expanded
6 and extruded foams that are thermoplastic petrochemical materials
7 utilizing a styrene monomer and processed by any number of techniques
8 including, but not limited to, fusion of polymer spheres (expandable
9 bead polystyrene), injection molding, foam molding, and extrusion-
10 blow molding (extruded foam polystyrene).

11 (8) "Food service business" means a business selling or providing
12 food for consumption on or off the premises, and includes full-
13 service restaurants, fast food restaurants, cafes, delicatessens,
14 coffee shops, grocery stores, vending trucks or carts, home delivery
15 services, delivery services provided through an online application,
16 and business or institutional cafeterias.

17 (9) "Food service product" means a product intended for one-time
18 use and used for food or drink offered for sale or use. Food service
19 products include, but are not limited to, containers, plates, bowls,
20 cups, lids, beverage containers, meat trays, deli rounds, utensils,
21 sachets, straws, condiment packaging, clamshells and other hinged or
22 lidded containers, wrap, and portion cups.

23 (10) "Household cleaning and personal care product" means any of
24 the following:

25 (a) Laundry detergents, softeners, and stain removers;

26 (b) Household cleaning products;

27 (c) Liquid soap;

28 (d) Shampoo, conditioner, styling sprays and gels, and other hair
29 care products; or

30 (e) Lotion, moisturizer, facial toner, and other skin care
31 products.

32 (11) "Household cleaning and personal care product manufacturing
33 industry" means an association that represents companies that
34 manufacture household cleaning products and personal care products.

35 (12) "Licensee" means a manufacturer of a covered product or
36 entity who licenses a brand and manufactures a covered product under
37 that brand. A franchisee is not a licensee unless a franchisee meets
38 the requirements of a licensee under this subsection.

39 (13) "Oral nutritional supplement" means a manufactured liquid,
40 powder capable of being reconstituted, or solid product that contains

1 a combination of carbohydrates, proteins, fats, fiber, vitamins, and
2 minerals intended to supplement a portion of a patient's nutrition
3 intake.

4 (14)(a) "Plastic beverage container" means a bottle or other
5 rigid container that is capable of maintaining its shape when empty,
6 comprised solely of one or multiple plastic resins designed to
7 contain a beverage. "Plastic beverage container" includes a
8 container's cap or lid, beginning January 1, 2025;

9 (b) Plastic beverage container does not include:

10 ((~~a~~)) (i) Refillable beverage containers, such as containers
11 that are sufficiently durable for multiple rotations of their
12 original or similar purpose and are intended to function in a system
13 of reuse;

14 ((~~b~~)) (ii) Rigid plastic containers or plastic bottles that are
15 or are used for medical devices, medical products that are required
16 to be sterile, nonprescription and prescription drugs, or dietary
17 supplements as defined in RCW 82.08.0293;

18 ((~~c~~)) (iii) Bladders or pouches that contain wine; or

19 ((~~d~~)) (iv) Liners, caps, corks, closures, labels, and other
20 items added externally or internally but otherwise separate from the
21 structure of the bottle or container, other than a cap or lids; and

22 (c) Other products subject to minimum postconsumer recycled
23 content requirements.

24 (15)(a) "Plastic household cleaning (~~and~~) container or personal
25 care product container" means a bottle, jug, or other rigid container
26 (~~with a neck or mouth narrower than the base, and~~):

27 (i) ((A)) With a minimum capacity of eight fluid ounces or its
28 equivalent volume;

29 (ii) ((A)) With a maximum capacity of five fluid gallons or its
30 equivalent volume;

31 (iii) That is capable of maintaining its shape when empty;

32 (iv) Comprised solely of one or multiple plastic resins; and

33 (v) Containing a household cleaning or personal care product.

34 (b) "Plastic household cleaning (~~and~~) product container or
35 personal care product container" does not include:

36 (i) Refillable household cleaning (~~and~~) product containers or
37 personal care product containers, such as containers that are
38 sufficiently durable for multiple rotations of their original or
39 similar purpose and are intended to function in a system of reuse;
40 ((~~and~~))

1 (ii) Rigid plastic containers or plastic bottles that are medical
2 devices, medical products that are required to be sterile, and
3 nonprescription and prescription drugs, dietary supplements as
4 defined in RCW 82.08.0293, and packaging used for those products;

5 (iii) Other covered products subject to minimum postconsumer
6 recycled content requirements; or

7 (iv) Liners, corks, closures, labels, and other items added
8 externally or internally but otherwise separate from the structure of
9 the bottle or container, other than a cap or lid.

10 (16) "Plastic trash bag" means a bag that is made of
11 noncompostable plastic, is at least 0.70 mils thick, and is designed
12 and manufactured for use as a container to hold, store, or transport
13 materials to be discarded or recycled, and includes, but is not
14 limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner
15 bag, kitchen bag, or compactor bag. "Plastic trash bag" does not
16 include any compostable bags meeting the requirements of chapter
17 70A.455 RCW. "Plastic trash bag" does not include any reusable
18 plastic carryout bag meeting the requirements of RCW
19 70A.530.020(6)(b).

20 (17) "Plastic trash bag manufacturing industry" means an
21 association that represents companies that manufacture plastic trash
22 bags.

23 (18) "Postconsumer recycled content" means the content of a
24 covered product made of recycled materials derived specifically from
25 recycled material generated by households or by commercial,
26 industrial, and institutional facilities in their role as end users
27 of a product that can no longer be used for its intended purpose.
28 "Postconsumer recycled content" includes returns of material from the
29 distribution chain.

30 (19)(a) "Producer" means the following person responsible for
31 compliance with minimum postconsumer recycled content requirements
32 under this chapter for a covered product sold, offered for sale, or
33 distributed in or into this state:

34 (i) If the covered product is sold (~~under~~) with the
35 manufacturer's own brand or lacks identification of a brand, the
36 producer is the person who manufactures the covered product;

37 (ii) If the covered product is manufactured by a person other
38 than the brand owner, the producer is the person who is the licensee
39 of a brand or trademark under which a covered product is sold,
40 offered for sale, or distributed in or into this state, whether or

1 not the trademark is registered in this state, unless the
2 manufacturer or brand owner of the covered product has agreed to
3 accept responsibility under this chapter; or

4 (iii) If there is no person described in (a)(i) and (ii) of this
5 subsection over whom the state can constitutionally exercise
6 jurisdiction, the producer is the person who imports or distributes
7 the covered product in or into the state.

8 (b) A person is the "producer" of a covered product sold, offered
9 for sale, or distributed in or into this state, as defined in (a)(i)
10 through (iii) of this subsection, except where another person has
11 mutually signed an agreement with a producer as defined in (a)(i)
12 through (iii) of this subsection that contractually assigns
13 responsibility to the person as the producer, and the person has
14 joined a registered producer responsibility organization as the
15 responsible producer for that covered product under this chapter.

16 (c) "Producer" does not include:

17 (i) Government agencies, municipalities, or other political
18 subdivisions of the state;

19 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
20 social welfare organizations; ((~~or~~))

21 (iii) De minimis producers that annually sell, offer for sale,
22 distribute, or import in or into the country for sale in
23 Washington(~~(~~

24 ~~(A) Less)) less than one ton of a single category of plastic~~
25 ~~beverage containers, plastic household cleaning and personal care~~
26 ~~containers, or plastic trash bags each year; or~~

27 ~~((B) A single category of a covered product that in aggregate~~
28 ~~generates less than \$1,000,000 each year in revenue))~~

29 (iv) De minimis producers that have global gross revenue of less
30 than \$5,000,000 for the most recent fiscal year of the organization.
31 The department shall calculate an adjusted rate to maintain the small
32 business exemption by the rate of inflation. The adjusted rate must
33 be calculated to the nearest cent using the consumer price index.
34 Each adjusted rate calculated under this subsection takes effect on
35 the following January 1st.

36 (20)(a) "Retail establishment" means any person, corporation,
37 partnership, business, facility, vendor, organization, or individual
38 that sells or provides merchandise, goods, or materials directly to a
39 customer.

1 (b) "Retail establishment" includes, but is not limited to, food
2 service businesses, grocery stores, department stores, hardware
3 stores, home delivery services, pharmacies, liquor stores,
4 restaurants, catering trucks, convenience stores, or other retail
5 stores or vendors, including temporary stores or vendors at farmers
6 markets, street fairs, and festivals.

7 (21)(a) "Utensil" means a product designed to be used by a
8 consumer to facilitate the consumption of food or beverages,
9 including knives, forks, spoons, cocktail picks, chopsticks, splash
10 sticks, and stirrers.

11 (b) "Utensil" does not include plates, bowls, cups, and other
12 products used to contain food or beverages.

13 (22) "Brand" means a name, symbol, word, logo, or mark that
14 identifies a product and attributes the product and its components,
15 including packaging, to the brand owner of the product as the
16 producer.

17 (23) "Durable good" means a product that provides utility over an
18 extended period of time.

19 (24) "Entity" means an individual and any form of business
20 enterprise. For purposes of calculating the de minimis producer
21 thresholds under this chapter, a producer entity includes all legal
22 entities that are affiliated by common ownership of 50 percent or
23 greater, including parents, subsidiaries, and commonly owned
24 affiliates.

25 (25)(a) "Polyethylene terephthalate thermoform plastic container"
26 means a clear or colored plastic container, such as a clamshell, lid,
27 tray, egg carton, trifold, or similar rigid, nonbottle packaging,
28 formed from sheets of extruded polyethylene terephthalate resin and
29 used to package consumable or durable goods that reach consumers,
30 including:

31 (i) Branded and prepackaged containers that have been filled with
32 products and sealed prior to receipt by the retail establishment,
33 such as fresh produce, baked goods, nuts, toys, electronics, and
34 tools;

35 (ii) Containers that may be filled at the point-of-sale at a
36 retail establishment;

37 (iii) Unfilled containers that are sold directly;

38 (iv) Hinged plastic containers, commonly known as "clamshells" or
39 "blister packaging";

40 (v) Two-piece unhinged containers;

1 (vi) One-piece containers without lids, such as trays; and
2 (vii) Trifold or tent containers with one or more hinges and a
3 flat bottom.

4 (b) "Polyethylene terephthalate thermoform plastic container"
5 does not include:

6 (i) Household cleaning products or personal care products;

7 (ii) Polypropylene plastic tubs;

8 (iii) Refillable containers, such as containers that are
9 sufficiently durable for multiple rotations of their original or
10 similar purpose and are intended to function in a system of reuse;

11 (iv) A lid or seal of a different material type from plastic;

12 (v) A refillable polyethylene terephthalate thermoform plastic
13 container that ordinarily would be returned to the manufacturer to be
14 refilled and resold;

15 (vi) Plastic containers that are or are used for medical devices,
16 medical products that are required to be sterile, prescription drugs,
17 or dietary supplements as defined in RCW 82.08.0293;

18 (vii) Plastic containers for perishable food that may spoil or
19 otherwise become unfit for human consumption because of its nature or
20 type of physical condition including, but not limited to, fresh and
21 processed meats, poultry, seafood, dairy products, eggs in the
22 shells, and fresh fruit and vegetables;

23 (viii) Other covered products subject to minimum postconsumer
24 recycled content requirements under this chapter; and

25 (ix) Polyethylene terephthalate thermoform plastic containers
26 accompanying a durable good when the durable good model, and the
27 associated packaging, was designed prior to January 1, 2028.

28 (26) (a) "Polypropylene plastic tub" means a wide mouth, rigid
29 container used to package consumable or durable goods that reach
30 consumers, with a maximum capacity of 50 ounces, that is:

31 (i) Capable of maintaining its shape when empty;

32 (ii) Comprised solely of polypropylene; and

33 (iii) Sealed with tamper-proof film or a detachable lid capable
34 of multiple openings and closures.

35 (b) "Polypropylene plastic tub" does not include:

36 (i) Household cleaning and personal care products;

37 (ii) Plastic containers that are or are used for medical devices,
38 medical products that are required to be sterile, nonprescription and
39 prescription drugs, or dietary supplements as defined in RCW
40 82.08.0293;

1 (iii) Polyethylene terephthalate thermoform plastic containers;
2 (iv) Single-use plastic cups made of polypropylene, polyethylene
3 terephthalate, or polystyrene;
4 (v) Plastic tubs for perishable food that may spoil or otherwise
5 become unfit for human consumption because of its nature or type of
6 physical condition including, but not limited to, fresh and processed
7 meats, poultry, seafood, dairy products, eggs in the shells, and
8 fresh fruit and vegetables; and
9 (vi) Other covered products subject to minimum postconsumer
10 recycled content requirements.

11 (27) (a) "Single-use plastic cup" means all beverage cups that are
12 nonsealed or sealed at point-of-sale.

13 (b) Single-use plastic cups do not include: (i) Commercially or
14 home compostable cups; (ii) expanded polystyrene cups; (iii)
15 composite plastic-lined fiber cups; or (iv) other covered products
16 subject to minimum postconsumer recycled content requirements.

17 **PART 5**
18 **MISCELLANEOUS**

19 NEW SECTION. Sec. 501. Sections 201 through 205 of this act
20 constitute a new chapter in Title 70A RCW.

21 NEW SECTION. Sec. 502. 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 Correct the title.

EFFECT: Strikes the underlying bill addressing extended producer responsibility and postconsumer recycled content requirements for packaging and paper products, and:

(1) Directs the department of ecology (ecology) to identify a statewide list of materials suitable for curbside collection services and a statewide list of materials suitable for drop-off collection.

(a) Requires the list of materials suitable for curbside collection services to initially include specified types of paper, metal cans, and PET and HDPE plastic containers.

(b) Requires the list of materials suitable for drop-off collection to include glass and flexible plastic.

(c) Provides a process for ecology to identify additional materials or remove materials from a list, based on stakeholder consultation and consideration of specified factors.

(2) Directs ecology to complete a statewide needs assessment, relying on the results of a 2023 recycling performance rates study produced pursuant to an operating budget proviso to ecology.

(a) Requires the needs assessment to be developed following a specified process that includes stakeholder consultation, and to evaluate capacity, costs, gaps, and needs of each city or county undertaking local solid waste planning in order to achieve the recycling rates from the 2023 recycling performance rates study.

(b) Requires the statewide needs assessment to evaluate existing services currently being delivered, the availability and types of recycling services, current methods and infrastructure for serving residents, new or expanded services and infrastructure needed in each solid waste planning jurisdiction, certain information related to costs of services and infrastructure, and other specified factors.

(3) Establishes an advisory committee comprised of representatives of specified governments, businesses, and organizations, and given duties to advise ecology on the development of curbside collection and drop-off lists and the statewide needs assessment.

(4) Establishes postconsumer recycled content requirements for certain plastic products, including new requirements for polypropylene tubs and polypropylene tubs in direct contact with food or edible products, for PET, polypropylene, and polystyrene single-use plastic cups, and for PET thermoform plastic containers.

(a) Establishes a five-year ecology waiver process for producers of polypropylene tubs and PET thermoform plastic containers.

(b) Requires ecology to ensure that rules consider the federal rules and guidelines and prohibits ecology from imposing requirements in direct conflict with a federal law or regulation.

(5) Amends existing postconsumer recycled content requirements, including by making plastic beverage container caps and lids subject to recycled content requirements, making plastic household cleaning containers and personal care product containers subject to recycled content requirements regardless of whether its neck or mouth is narrower than the base, and excluding certain liners, corks, closures, labels, and other items attached to household cleaning product and personal care product containers from postconsumer recycled content requirements.

(6) Authorizes producers to mutually sign an agreement to contractually assign responsibility for compliance with postconsumer recycled content requirements to another party.

(7) Amends the threshold for revenue generation by de minimis producers exempt from postconsumer recycled content requirements.

--- END ---