

2SHB 2049 - H AMD 869

By Representative Fey

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

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

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

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

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

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

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

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

8 PART 2

9 NEEDS ASSESSMENT

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

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

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

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

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

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

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

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

31 (8) "Overburdened community" means an overburdened community
32 identified and prioritized by the department under RCW
33 70A.02.050(1)(a).

34 (9)(a) "Packaging" means a material, substance, or object that
35 is:

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

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

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

3 (iv) Supplied at the point of sale to facilitate the delivery of
4 the item; or

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

9 (b) "Packaging" does not include:

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

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

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

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

24 (B) Packaging for products intended for animals that are
25 regulated as animal drugs, biologics, parasiticides, medical devices,
26 or diagnostics used to treat, or administered to, animals under the
27 federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq., the
28 federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec.
29 136 et seq., or the federal virus-serum-toxin act, 21 U.S.C. Sec. 151
30 et seq., as amended;

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

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

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

4 (viii) Packaging products used by entities or individuals covered
5 under North American industry classification system codes 1151, 3253,
6 42491, or 44424;

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

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

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

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

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

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

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

1 through (iii) of this subsection that contractually assigns
2 responsibility to the person as the producer, and the person has
3 joined a registered producer responsibility organization as the
4 responsible producer for that covered product under this chapter.

5 (c) "Producer" does not include:

6 (i) Government agencies, municipalities, or other political
7 subdivisions of the state;

8 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
9 social welfare organizations; or

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

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

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

20 (12) "Vulnerable population" has the same meaning as in RCW
21 70A.02.010.

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

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

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

37 (2) For purposes of implementing this chapter, the department
38 must, where appropriate, use and rely on the department's *December*

1 2023 Washington Recycling, Reuse, and Source Reduction Target Study
2 and Community Input Process.

3 NEW SECTION. **Sec. 203.** CURBSIDE AND DROP-OFF RECYCLABLE
4 MATERIALS COLLECTION LISTS FOR NEEDS ASSESSMENT. (1) By October 1,
5 2025, the department must develop and publish a:

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

8 (b) Separate list of materials suitable for residential drop-off
9 collection.

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

13 (a) Newspaper;

14 (b) Paperboard and chipboard;

15 (c) Loose paper;

16 (d) Corrugated cardboard;

17 (e) Magazines;

18 (f) Envelopes;

19 (g) Aluminum cans;

20 (h) Tin or steel cans;

21 (i) High density polyethylene plastic containers; and

22 (j) Polyethylene terephthalate containers.

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

25 (a) Glass; and

26 (b) Flexible plastic.

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

33 (a) The stability, maturity, accessibility, and viability of
34 responsible end markets;

35 (b) Economic factors;

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

37 (d) The material's compatibility with existing recycling
38 infrastructure;

39 (e) The amount of the material available;

- 1 (f) The ability for waste generators to easily identify and
2 properly prepare the material;
- 3 (g) The practicalities of sorting and storing the material;
- 4 (h) Contamination;
- 5 (i) Environmental health and safety considerations; and
- 6 (j) The anticipated yield loss for the material during the
7 recycling process.

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

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

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

22 (2) The statewide needs assessment must be:

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

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

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

32 (d) Accepted from the selected consultant as complete by the
33 department.

34 (3) The statewide needs assessment must:

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

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

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

10 (B) The current methods and infrastructure for serving residents,
11 including curbside recycling service areas and material drop-off
12 locations;

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

17 (D) Any areas within each jurisdiction where curbside garbage
18 collection services are offered to residents in single-family and
19 multifamily residences but curbside recycling services are not
20 offered;

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

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

27 (iv) Availability and performance of collection, transport, and
28 processing capacity and infrastructure, including consideration of
29 material quality and contamination;

30 (v) Necessary capital investments to existing reuse and recycling
31 infrastructure, and how to maximize the use of existing
32 infrastructure;

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

38 (c) Estimate the total costs of investments necessary to reach
39 target rates, within each jurisdiction, as well as ongoing program

1 costs related to labor, equipment, and maintenance. Cost factors and
2 variables to be considered in the estimates include:

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

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

5 (iii) Distance from a local jurisdiction to the nearest recycling
6 facility;

7 (iv) Whether a jurisdiction pays for transportation and sorting
8 of collected materials and whether it receives a commodity value from
9 processed materials;

10 (v) Geographic location or other variables contributing to
11 regional differences in costs;

12 (vi) Cost increases over time; and

13 (vii) Any other factors as determined to be necessary by the
14 department, with input from stakeholders;

15 (d) (i) Identify cost factors and other variables to be considered
16 in the development of funding estimates for government entities for
17 any services other than curbside collection to be carried out by
18 government entities that may be needed to achieve performance rates
19 developed under section 202 of this act;

20 (ii) Identify methods to consider greenhouse gas emissions and
21 other environmental outcomes associated with potential expansions of
22 curbside recycling services to rural or sparsely populated areas;

23 (e) Compile relevant information to be considered in the
24 development of criteria by the department to determine whether a
25 covered product is recyclable, reusable, or compostable through
26 Washington's curbside recycling collection system. The relevant
27 information to be compiled may include whether covered product
28 materials are:

29 (i) Or may be, collected, separated, and processed in sufficient
30 quantity and quality into a marketable feedstock that can be used in
31 the production of new products; or

32 (ii) Designed in a way that is problematic for reuse, recycling,
33 or composting;

34 (f) Evaluate how the state's existing recycling system can be
35 improved in a socially just manner as it relates to activities
36 required under this chapter. The assessment must:

37 (i) Include meaningful consultation with overburdened communities
38 and vulnerable populations;

39 (ii) Determine conditions and make recommendations including, at
40 minimum:

1 (A) Improving access to the recycling system for women and
2 minority individuals;

3 (B) The sufficiency of local government requirements related to
4 multifamily recycling services and their implementation;

5 (C) Identification of activities that negatively
6 disproportionately impact any community and in particular
7 overburdened communities and vulnerable populations, including new
8 fees, costs, or deposits;

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

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

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

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

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

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

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

34 (a) Four representatives of local governments representing
35 geographic areas across the state, including two representatives of
36 counties and two representatives of cities, each with one
37 representative of urban communities and one representative of rural
38 communities;

1 (b) One representative of tribal or indigenous solid waste
2 services organizations;

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

5 (d) Two representatives of community-based organizations whose
6 mission is to serve the interests of overburdened communities and
7 vulnerable populations;

8 (e) Two representatives of environmental nonprofit organizations;

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

12 (g) Six representatives of the recycling industry, including
13 local governments' service providers, solid waste collection
14 companies or associations, material recovery facilities, or other
15 processing facilities;

16 (h) Four representatives of producers of covered products or
17 producer trade associations representing different types of covered
18 products;

19 (i) Two representatives of packaging suppliers that are not
20 producers as defined under this chapter representing different
21 material categories; and

22 (j) One representative of a retail establishment.

23 (3) Advisory committee members must be appointed by the director
24 of the department by September 1, 2025. In appointing members, the
25 department shall:

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

29 (b) Consider recommendations for appointments from relevant
30 represented groups or associations and from individuals interested in
31 participating on the advisory committee.

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

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

38 (5) The advisory committee shall meet at least once every three
39 months at times and places specified by the department. The advisory
40 committee may also meet at other times and places, including

1 virtually, specified by the department or by a call of a majority of
2 the committee members, as necessary, to carry out the duties of the
3 advisory committee.

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

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

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

11 (a) Advise and make recommendations to the department on the
12 lists developed and published by the department under section 203 of
13 this act;

14 (b) Advise and make recommendations to the department on the
15 scope of the statewide needs assessment under section 204 of this
16 act; and

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

19 (8) Advisory committee members that are representatives of tribes
20 or tribal and indigenous services organizations or community-based
21 and environmental nonprofit organizations must, if requested, be
22 compensated and reimbursed in accordance with RCW 43.03.050,
23 43.03.060, and 43.03.220.

24 PART 3

25 ESTABLISHING POSTCONSUMER RECYCLED CONTENT

26 REQUIREMENTS

27 NEW SECTION. **Sec. 301.** A new section is added to chapter
28 70A.245 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 302.** A new section is added to chapter
32 70A.245 RCW to read as follows:

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

- 1 (1) For polypropylene single-use plastic cups:
2 (a) Products manufactured between January 1, 2031, through
3 December 31, 2032: No less than 15 percent postconsumer recycled
4 content plastic by weight; and
5 (b) Products manufactured on and after January 1, 2033: No less
6 than 25 percent postconsumer recycled content plastic by weight.
7 (2) For polyethylene terephthalate and polystyrene single-use
8 plastic cups:
9 (a) Products manufactured between January 1, 2033, through
10 December 31, 2034: No less than 20 percent postconsumer recycled
11 content plastic by weight; and
12 (b) Products manufactured on and after January 1, 2035: No less
13 than 30 percent postconsumer recycled content plastic by weight.

14 NEW SECTION. **Sec. 303.** A new section is added to chapter
15 70A.245 RCW to read as follows:

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

- 23 (1) For packaging for consumable goods:
24 (a) Products manufactured between January 1, 2030, through
25 December 31, 2034: No less than 10 percent postconsumer recycled
26 content plastic by weight; and
27 (b) Products manufactured on and after January 1, 2035: No less
28 than 30 percent postconsumer recycled content plastic by weight.
29 (2) For packaging for consumable goods in direct contact with
30 food or edible products:
31 (a) Products manufactured between January 1, 2034, through
32 December 31, 2038: No less than 10 percent postconsumer recycled
33 content plastic by weight; and
34 (b) Products manufactured on and after January 1, 2039: No less
35 than 30 percent postconsumer recycled content plastic by weight.
36 (3) (a) Except as provided in (b) of this subsection, for
37 packaging used for durable goods: On and after January 1, 2033, no
38 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 ---