
SENATE BILL 5022

State of Washington

67th Legislature

2021 Regular Session

By Senators Das and Rolfes

Prefiled 12/17/20.

1 AN ACT Relating to the management of certain materials to support
2 recycling and waste and litter reduction; amending RCW 43.21B.300,
3 70A.205.005, 70A.205.010, 70A.205.115, 70A.205.045, 70A.205.070,
4 81.77.030, 81.77.160, 81.77.185, and 81.80.470; reenacting and
5 amending RCW 43.21B.110; adding a new chapter to Title 70A RCW; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** FINDINGS—INTENT. (1) The legislature finds
9 the department of ecology was directed, through an independent
10 consultant, to study how plastic packaging is managed in the state,
11 assess various policy options, and provide recommendations to achieve
12 goals, that included:

13 (a) Plastic packaging sold into the state is 100 percent
14 recyclable, reusable, or compostable by January 1, 2025.

15 (b) Plastic packaging sold into the state incorporates at least
16 20 percent postconsumer recycled content by January 1, 2025.

17 (c) Plastic packaging is reduced when possible and optimized to
18 meet the need for it.

19 (2) The legislature also finds that the study recommendations
20 included establishing an extended producer responsibility policy for
21 all consumer packaging and paper with a framework that makes

1 producers responsible for achieving specific management and
2 environmental outcomes for the consumer packaging they supply into
3 Washington state. In addition, the legislature finds extended
4 producer responsibility policies designed to cover all material types
5 collected through the state's existing recycling system offers the
6 potential for greater economies of scale and operational efficiencies
7 than could be achieved under a policy applied only to a subset of
8 materials collected through that system.

9 (3) The legislature intends that the policy of the state is to
10 ensure that by 2040 an overall recycling and reuse rate of 90 percent
11 is achieved for plastic packaging and other packaging materials. The
12 legislature further intends that these materials are recycled or
13 reused through extended producer responsibility programs. It is the
14 intent of the legislature that extended producer responsibility
15 programs are implemented by and for producers of plastic packaging
16 and other material types so that the design and management of their
17 packaging is accomplished in a manner that ensures minimal
18 environmental impact, involves producers from design concept to end-
19 of-life management, and incentivizes innovation and research to
20 minimize environmental impacts.

21 NEW SECTION. **Sec. 2.** DEFINITIONS. Except for section 21 of this
22 act, the definitions in this section apply throughout this chapter
23 unless the context clearly requires otherwise.

24 (1) "Aluminum" means a covered product made of the chemical
25 element aluminum that forms a silvery white to dull gray, nonmagnetic
26 metal.

27 (2) "Brand" means a name, symbol, word, or mark that identifies a
28 product and attributes the product and its components, including
29 packaging, to the brand holder of the product as the producer.

30 (3) "Brand holder" means a person who owns or licenses a brand or
31 who otherwise has rights to market a product under the brand, whether
32 or not the brand trademark is registered.

33 (4) "Compostable" means a covered product that is capable of
34 undergoing aerobic biological decomposition in a system meeting the
35 requirements of chapter 70A.205 RCW, that results in the material
36 being broken down primarily into carbon dioxide, water, inorganic
37 compounds, and biomass.

38 (5) "Consumer" means a person to whom a covered product is
39 supplied that is the intended end user of the covered product.

- 1 (6) "Covered product" means packaging and paper products sold or
2 supplied to consumers.
- 3 (7) "Department" means the department of ecology.
- 4 (8) "Designated for collection" means the covered products sold
5 or supplied by a producer that are included in the material
6 categories listed in the producer's plan to be collected for reuse or
7 recycling.
- 8 (9) "Environmentally sound" means practices that:
- 9 (a) Comply with all applicable laws and rules to protect workers,
10 public health, and the environment;
- 11 (b) Provide for adequate recordkeeping, tracking, and documenting
12 of the fate of materials within the state and beyond; and
- 13 (c) Include environmental liability coverage for the producers or
14 producer responsibility organizations implementing a plan.
- 15 (10) "Flexible plastic" means any covered product made of
16 polymers that is flexible in form, including films and multilayer
17 laminates.
- 18 (11) "Glass" means a covered product made of soda lime glass or
19 borosilicate glass substance.
- 20 (12) "Material category" means a group of covered products that
21 have similar properties such as chemical composition, shape, or other
22 characteristics including, but not limited to:
- 23 (a) Plastic beverage containers;
- 24 (b) Other rigid plastic;
- 25 (c) Flexible plastic;
- 26 (d) Paper;
- 27 (e) Aluminum;
- 28 (f) Steel; and
- 29 (g) Glass.
- 30 (13) "Packaging" means a material, substance, or object that is:
- 31 (a) Used to protect, contain, transport, or serve a product;
- 32 (b) Sold or supplied to consumers expressly for the purpose of
33 protecting, containing, transporting, or serving products;
- 34 (c) Attached to a product or its container for the purpose of
35 marketing or communicating information about the product;
- 36 (d) Supplied at the point of sale to facilitate the delivery of
37 goods; or
- 38 (e) Supplied to or purchased by consumers expressly for the
39 purpose of facilitating food or beverage consumption that is

1 ordinarily disposed of after a single use or short-term use, whether
2 or not it could be reused.

3 (14) "Paper" means a covered product made of paper fiber,
4 regardless of its cellulosic fiber source, which may include, but is
5 not limited to: Wood, wheat, rice, cotton, bananas, eucalyptus,
6 bamboo, hemp, and sugar cane or bagasse.

7 (15) "Paper product" means paper sold and supplied including, but
8 not limited to, flyers, brochures, booklets, catalogs, newspapers,
9 magazines, copy paper, printing paper, and all other paper materials
10 except for: (a) Bound books; and (b) paper products that, by their
11 use, could become unsafe or unsanitary to handle.

12 (16) "Plan" means description of the approach and activities
13 developed by a producer or producer responsibility organization to
14 fulfill the requirements and to carry out the responsibilities of
15 producers under this chapter.

16 (17)(a) "Plastic beverage container" means a covered product made
17 of rigid plastic for the beverages identified in (a)(i) through (v)
18 of this subsection, intended for human or animal consumption, and in
19 a quantity more than or equal to two fluid ounces and less than or
20 equal to one gallon:

- 21 (i) Water and flavored water;
- 22 (ii) Beer or other malt beverages;
- 23 (iii) Wine;
- 24 (iv) Distilled spirits;
- 25 (v) Mineral water, soda water, and similar carbonated soft
26 drinks; and
- 27 (vi) Any beverage other than those specified in this subsection,
28 except infant formula.

29 (b) "Plastic beverage container" does not include rigid plastic
30 containers or rigid plastic bottles that are medical devices, medical
31 products that are required to be sterile, prescription medicine, and
32 packaging used for those products.

33 (18) "Postconsumer recycled content" means the content of a
34 product made of recycled materials derived specifically from
35 postconsumer recycled material sources.

36 (19)(a) "Producer" means a person who meets one of the following
37 criteria, in descending order of priority, for assigning
38 responsibility to meet the requirements of this chapter:

1 (i) Is the brand holder of a brand under which the covered
2 product is sold, offered for sale, or distributed in or into
3 Washington;

4 (ii) Imports the covered product into Washington for sale, offer
5 for sale, or distribution in the state, including remote sale or
6 distribution, such as through sales outlets, catalogs, and the
7 internet, but is not the brand holder as specified under (a)(i) of
8 this subsection;

9 (iii) Elects to assume the responsibility and register in lieu of
10 a producer as defined under (a)(i) and (ii) of this subsection; or

11 (iv) As determined by the department to be the responsible party
12 for a covered product.

13 (b) "Producer" does not include:

14 (i) Government agencies, municipalities, or other political
15 subdivisions of the state;

16 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
17 social welfare organizations; or

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

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

21 (B) Covered products that in aggregate generate less than
22 \$1,000,000 each year in revenue.

23 (20) "Producer responsibility organization" means:

24 (a) A nonprofit organization that qualifies for a tax exemption
25 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code
26 and is designated by a producer or group of producers to develop and
27 carry out the activities required of producers by this chapter; or

28 (b) A single producer that develops and implements a plan to
29 carry out the activities for its own covered products, as required by
30 this chapter.

31 (21) "Program" means the activities conducted to implement a
32 plan.

33 (22)(a) "Public place" includes streets, sidewalks, plazas, town
34 squares, public parks, beaches, forests, or other public land open
35 for recreation or other uses, and transportation facilities such as
36 bus and train stations, airports, and ferry terminals.

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

39 (23) "Recyclable" means a covered product that is regularly
40 collected, separated, and reprocessed into a recycled material, and

1 that does not contain harmful chemical, physical, biological, or
2 radiological substances that will pose a threat to human health or
3 the environment for its intended or likely manner of use.

4 (24) (a) "Recycled material" means material derived from covered
5 products that is reprocessed into products or commodities used in the
6 production of new products whether for the original or another
7 purpose.

8 (b) "Recycled material" does not include energy recovery and the
9 reprocessing of materials that are to be used as fuels or landfill
10 cover.

11 (25) "Reusable" means a covered product that is sufficiently
12 durable for multiple rotations of its original or similar purpose or
13 function in a system of reuse.

14 (26) "Reused material" means material that is collected after use
15 and reused for its original or similar purpose or function.

16 (27) "Rigid plastic" means any covered product made of plastic
17 polymers that is rigid or semirigid in form, including foams.

18 (28) "Socially just management" means practices that:

19 (a) Allow every individual to benefit from the same economic,
20 political, and social rights, privileges, and opportunities, free
21 from socioeconomic status, regardless of: Race; health disparities;
22 age; sex, including on the basis of gender identity or orientation;
23 disability; religion; or other characteristics.

24 (b) Do not disproportionately impact any community and in
25 particular communities in the state or elsewhere that bear
26 disproportionately higher levels of adverse environmental, social
27 justice, and economic impacts.

28 (29) "Steel" means any covered product made of a ferrous metal
29 substance.

30 (30) "Toxic substance" includes chemicals or classes of chemicals
31 restricted in:

32 (a) Children's products under chapter 70A.430 RCW and high
33 priority chemical of high concern for children in chapter 173-334
34 WAC;

35 (b) Persistent bioaccumulative toxins listed in chapter 173-333
36 WAC; or

37 (c) Consumer products under chapter 70A.222, 70A.230, 70A.335,
38 70A.340, 70A.350, 70A.400, or 70A.405 RCW.

1 NEW SECTION. **Sec. 3.** PRODUCER RESPONSIBILITY ORGANIZATION

2 DUTIES. (1) Beginning April 1, 2022, every producer must annually
3 register with the department as an individual producer responsibility
4 organization or join a third-party producer responsibility
5 organization that is registered with the department. Producers that
6 are not registered as or have not joined a producer responsibility
7 organization may not sell or supply covered products in or into
8 Washington.

9 (2) Third-party producer responsibility organizations must
10 establish a governance structure for their organization that is
11 managed by a board of directors comprised of producers subject to
12 this chapter.

13 (3) By April 1, 2022, and each April 1st thereafter, every
14 registered producer responsibility organization must submit with
15 their registration the following:

16 (a) A list of all their member producers and brands;

17 (b) An annual payment, as determined by the department in section
18 4 of this act;

19 (c) Until a producer responsibility organization begins to submit
20 annual reports, as specified under section 17 of this act, the
21 following data for the prior calendar year:

22 (i) The weight, by material category, of covered products
23 supplied into the state to consumers for residential use, accompanied
24 by a description of how the producer or producer responsibility
25 organization has distinguished and apportioned the quantities of
26 packaging and paper covered products supplied to consumers for
27 residential use from quantities supplied for nonresidential use that
28 are not considered covered products under this chapter;

29 (ii) The quantity of covered products supplied that were designed
30 to be reused or refilled, by material category, by weight and number
31 of units; and

32 (iii) The postconsumer recycled content, by material category, of
33 covered products supplied, including:

34 (A) The total postconsumer content by weight; and

35 (B) The total postconsumer content as a percentage of total
36 weight;

37 (d) A producer may submit national data allocated on a per-capita
38 basis for Washington to approximate the information required in this
39 subsection if the producer demonstrates to the department that state-
40 level data is not available or feasible to generate.

1 (4) Beginning January 1, 2024, every registered producer
2 responsibility organization must submit a plan to the department that
3 meets the requirements of sections 5 and 6 of this act.

4 (a) A producer responsibility organization registered with the
5 department as of April 1, 2022, must:

6 (i) Implement its approved plan by July 1, 2025; and

7 (ii) Submit an annual report to the department consistent with
8 section 17 of this act by September 1, 2026, and each September 1st
9 thereafter.

10 (b) A producer responsibility organization registering with the
11 department after April 1, 2022, must:

12 (i) Submit the list of producers, brands, data, and department
13 payment as required in subsection (3) of this section;

14 (ii) Submit a plan, informed by a stakeholder consultation
15 process, within one year of registration;

16 (iii) Implement its approved plan within six months of approval;
17 and

18 (iv) Submit an annual report to the department consistent with
19 section 17 of this act by September 1st, beginning the first year
20 after plan approval.

21 (5) A producer or producer responsibility organization that
22 submits information or records to the department under this chapter
23 may request that the information or records be made available only
24 for the confidential use of the department, the director, or the
25 appropriate division of the department. The director of the
26 department must give consideration to the request and if this action
27 is not detrimental to the public interest and is otherwise in
28 accordance with the policies and purposes of chapter 43.21A RCW, the
29 director must grant the request for the information to remain
30 confidential as authorized in RCW 43.21A.160.

31 NEW SECTION. **Sec. 4.** DEPARTMENT'S DUTIES. (1) The department
32 must implement, administer, and enforce this chapter.

33 (a) By January 31, 2022, and every January 31st thereafter, the
34 department must identify the annual costs it will incur under this
35 chapter. The department must determine an annual payment by producer
36 responsibility organizations that is adequate to cover, but not
37 exceed, the department's full costs to implement, administer, and
38 enforce this chapter in the next fiscal year, including rule making.

1 (b) Until the department has established an equitable payment
2 schedule, the department must equally divide the annual payment among
3 the number of producer responsibility organizations, except the
4 department may not assign a share of annual payment more than \$1,000
5 to producer responsibility organizations that represent a single
6 producer and report less than 100 tons of covered products supplied
7 during the most recent calendar year for which such data has been
8 reported.

9 (2) By April 1, 2022, and every April 1st thereafter, the
10 department must collect each registered producer responsibility
11 organization's payment of the department's cost for the coming fiscal
12 year. The department must:

13 (a) Apply any remaining annual payment funds from the current
14 year to the annual payment for the coming year, if the collected
15 annual payment exceeds the department's costs for a given year; and

16 (b) Increase annual payments for the coming year to cover the
17 department's costs, if the collected annual payment was less than the
18 department's costs for a given year.

19 (3) Beginning July 1, 2022, the department may determine the
20 responsible party for a covered product when the responsible party is
21 not a brand holder, does not import covered products into Washington,
22 or has not elected to assume the responsibility for covered products.

23 (4) (a) The department must review new, updated, and revised plans
24 submitted by producer responsibility organizations as required in
25 section 18 of this act. The department must:

26 (i) Make new, updated, and revised plans available for public
27 review and comment for at least 30 days,

28 (ii) Review new, updated, and revised producer responsibility
29 organization plans within 120 days of receipt of a complete plan;

30 (iii) Make a determination as to whether or not to approve a
31 plan, plan update, or plan revision and notify the producer
32 responsibility organization of the:

33 (A) Determination of approval if a plan provides for a program
34 that meets the requirements of this chapter, taking into
35 consideration comments received under (a) (i) of this subsection; or

36 (B) Reasons for not approving a plan. The producer responsibility
37 organization must submit a new or revised plan within 60 days after
38 receipt of the letter of disapproval.

1 (b) The approval of a plan by the department does not relieve
2 producers participating in the plan from responsibility for
3 fulfilling the requirements of this chapter.

4 (5) Beginning July 1, 2022, the department may develop criteria
5 to determine whether the covered products are reusable, recyclable,
6 or compostable. When developing the criteria, the department must, at
7 minimum, consider whether covered product materials: Are or may be
8 collected, separated, and processed in sufficient quantity and
9 quality into a marketable feedstock that can be used in the
10 production of new products; contain toxic substances; or are designed
11 in a way that is problematic for reuse, recycling, or composting.

12 (6) The department may adopt rules as necessary to implement,
13 administer, and enforce this chapter including, but not limited to:

14 (a) Establishing an equitable formula for determining each
15 producer responsibility organization's share of the annual payment
16 necessary to cover the department's costs, as identified under
17 subsection (1) of this section;

18 (b) Establishing additional plan content in addition to the
19 requirements established under section 6 of this act, as necessary to
20 fulfill the intent of this chapter;

21 (c) Requiring producers to collect and manage covered products
22 from additional locations or entities determined to be significant
23 sources of covered product waste including, but not limited to,
24 public places and events;

25 (d) Establishing additional elements to be included as annual
26 reporting requirements, in section 17 of this act, necessary to
27 determine the program's compliance with the requirements of this
28 chapter;

29 (e) Establishing third-party audit and verification requirements;
30 or

31 (f) Establishing processes for new, updated, and revised plan
32 approvals as required in section 18 of this act.

33 (7)(a) Beginning in 2025, and every other year thereafter, or
34 upon the petition from a representative of the producer
35 responsibility organization, but not more than annually, the
36 department shall consider whether the minimum postconsumer recycled
37 content requirements established in section 9 of this act should be
38 waived or reduced.

39 (b) The department must consider a petition from producers or
40 producer responsibility organizations within sixty days of receipt.

1 (c) The department may adopt rules to implement, administer, and
2 enforce minimum postconsumer recycled content of covered products,
3 and to adjust minimum postconsumer recycled content. In making a
4 determination to adjust the minimum postconsumer recycled content
5 requirements, the department may consider the following:

6 (i) Changes in market conditions, including supply and demand for
7 postconsumer recycled plastics, collection rates, and bale
8 availability;

9 (ii) Recycling rates;

10 (iii) The availability of suitable materials and feedstocks to
11 meet the minimum postconsumer recycled content requirements;

12 (iv) The capacity of recycling or processing infrastructure; and

13 (v) The carbon footprint, and other environmental and social
14 impacts, of the transportation and processing of the recycled
15 material.

16 (d) If the department determines that a minimum postconsumer
17 recycled content requirement should be adjusted, the adjusted rate
18 must be in effect until a new determination is made or upon the
19 expiration of the minimum postconsumer recycled content requirement's
20 effective period, whichever occurs first. The department may not
21 adjust the minimum postconsumer recycled content requirements above
22 the minimum postconsumer recycled content percentages, as established
23 under section 8(2) of this act.

24 (8)(a) Beginning January 1, 2028, and no more frequently than
25 every five years, the department may by rule:

26 (i) Establish reuse and recycling performance requirements for
27 years not specified in section 8(2) of this act;

28 (ii) Add reuse and recycling performance requirements for
29 additional material categories not specified in section 8(2) of this
30 act; and

31 (iii) Adjust the reuse and recycling performance requirements
32 established in section 8(2) of this act. In making a determination to
33 adjust the reuse and recycling performance requirements, the
34 department may consider the following:

35 (A) Changes in market conditions, including supply and demand for
36 recycled materials, collection rates, and availability;

37 (B) The capacity of sorting or processing infrastructure; and

38 (C) The carbon footprint and other social justice and
39 environmental impacts of the production and transportation of the
40 recycled material.

1 (b) If the department determines that a minimum reuse and
2 recycling performance requirement should be adjusted, the adjusted
3 requirement must be in effect until a new determination is made or
4 upon the expiration of the minimum reuse and recycling performance
5 requirement's effective period, whichever occurs first. The
6 department may not adjust the overall minimum reuse and recycling
7 performance requirements for all covered products below the
8 requirements established under section 8(2) of this act for the years
9 specified.

10 (c) The department may by rule add or amend material categories
11 in section 8(2) of this act to be included in the reuse and recycling
12 rate calculations as required in section 8(3)(g) of this act.

13 (d) A producer or producer responsibility organization may appeal
14 adjustments to the minimum reuse and recycling performance
15 requirement as determined under section 8(4) of this act to the
16 pollution control hearings board within 30 days of the department's
17 determination.

18 (9) Beginning July 1, 2022, the department may determine that a
19 producer responsibility organization that achieves the reuse and
20 recycling rate requirements established for each material category of
21 covered products supplied into the state as provided in section
22 8(2)(c) of this act and achieves the minimum reuse rates as
23 established in section 8(2)(a) and (b) of this act is considered to
24 achieve the overall reuse and recycling performance requirements for
25 all covered products.

26 (10) Beginning July 1, 2022, the department must maintain a
27 public website that:

28 (a) Lists producers and their covered products that are
29 participating in an approved plan; and

30 (b) Makes available each plan and annual report received by the
31 department under this chapter.

32 (11)(a) The department may administratively impose a civil
33 penalty of up to \$1,000 per violation per day on any person who
34 violates this chapter and up to \$10,000 per violation per day on any
35 person who intentionally, knowingly, or negligently violates this
36 chapter.

37 (b) Any person who incurs a penalty under this section may appeal
38 the penalty to the pollution control hearings board established in
39 chapter 43.21B RCW.

1 (c) Penalties levied under this subsection must be deposited in
2 the responsible packaging management account created in section 22 of
3 this act.

4 NEW SECTION. **Sec. 5.** PLAN PARTICIPATION OBLIGATION—STAKEHOLDER
5 CONSULTATION FOR PLAN. (1) Each producer of covered products must
6 participate in, implement, and fund an approved plan.

7 (2)(a) A producer that fulfills its responsibilities under this
8 chapter through a producer responsibility organization is responsible
9 jointly and severally, and does not assign its responsibilities under
10 this chapter to the producer responsibility organization.

11 (b) A producer responsibility organization may not include on its
12 board of directors, or otherwise be governed by, representatives or
13 affiliates of any public or private entities that submit bids to
14 perform work for the producer responsibility organization or that
15 contract with the producer responsibility organization.

16 (c) A producer responsibility organization must develop and
17 maintain a public website with enhanced language access informing the
18 public of plan implementation details, including collection services
19 and locations for each type of covered product, and a current list of
20 all producers participating in the plan.

21 (3) Prior to submitting a new, updated, or revised plan to the
22 department, a producer or producer responsibility organization must
23 conduct a consultation process to solicit and respond to input from
24 stakeholders and from the advisory committee established under
25 section 20 of this act. The consultation process required in advance
26 of the submission of a plan to the department is in addition to the
27 department-led public comment process specified in section 4(4) of
28 this act. The consultation process must:

29 (a) Address all elements of the system including collection,
30 sorting, processing, reuse, use of recycled materials, and education;

31 (b) Allow opportunities for all stakeholders and members of the
32 public to provide comment on the plan prior to its submission to the
33 department;

34 (c) Offer various formats and languages as necessary for
35 presenting the plan and receiving comments including workshops,
36 surveys, webinars, and one-on-one meetings; and

37 (d) Document all comments received and responsive answers
38 provided by the producer or producer responsibility organization for
39 purposes of a stakeholder consultation report to be included with the

1 submission of a plan to the department. The stakeholder consultation
2 report must also describe each forum in which comment or input was
3 received by the plan proponent.

4 NEW SECTION. **Sec. 6.** PLAN CONTENTS—OVERVIEW. (1) A producer
5 responsibility organization must submit a plan to the department
6 describing the approach and activities to fulfill the requirements of
7 this chapter.

8 (2) All plans and plan updates must contain the following
9 components:

10 (a) A list and brief explanation of the covered products supplied
11 or sold in or into Washington by each producer and by brand
12 participating in the plan;

13 (b) A description of how the:

14 (i) Producer responsibility organization will fulfill the
15 requirements of this chapter;

16 (ii) Program will use and interact with recycling programs and
17 infrastructure that predate the implementation of the plan, including
18 a description of procurement practices; and

19 (iii) Producers will increase the reuse, refill, and
20 recyclability of covered products;

21 (c) A description of actions to be taken to:

22 (i) Work with and achieve the goals of underserved and
23 underrepresented communities that bear a disproportionate share of
24 adverse environmental, social justice, and economic impacts through
25 socially just management practices including, but not limited to,
26 community outreach and engagement in the appropriate language of the
27 impacted communities and meaningful consultation; and

28 (ii) Increase the efficiency of the system of collecting and
29 managing covered products through reuse and recycling;

30 (d) Protocols for producers retaining the right of first refusal
31 of recycled materials produced from covered products collected;

32 (e) The identification of market engagement strategies for
33 collection and recycling services, except for services provided under
34 chapter 81.77 RCW, to be used in direct procurement of services in
35 order to ensure open competition among waste management service
36 providers and improve effectiveness and efficiency including, but not
37 limited to, strategies that involve the use of competitive tenders or
38 open-market financial incentives;

1 (f) A list of covered products designated for collection as
2 required under section 11 of this act. The list must include covered
3 products designated for collection:

4 (i) From residents through curbside collection and, where
5 curbside garbage service is not available, through permanent
6 collection facilities;

7 (ii) That have been determined to be problematic for inclusion in
8 curbside collection and therefore designated for collection using
9 alternate means; and

10 (iii) From residents through public place collection;

11 (g) A description of the activities to be undertaken to meet the
12 convenience standards for collection of covered products as
13 established under section 11 of this act, including the jurisdictions
14 where curbside collection services are available, the location of
15 each permanent collection facility, the types and locations of
16 alternate collection methods used, and the locations of public place
17 collection services;

18 (h) A plan to minimize the amount, cost, and toxicity of
19 residuals from the collection and processing of covered materials
20 designated for collection. These include residuals from materials
21 recovery facilities or similar facilities producing specification-
22 grade commodities for sale, but do not include residuals from further
23 processing of end market-ready material;

24 (i) A plan for collecting, transporting, and processing covered
25 products to ensure responsible management and recycling, including:

26 (i) Achieving the reuse and recycling performance requirements in
27 section 8 of this act;

28 (ii) Providing material that will assist producers in meeting
29 recycled content requirements specified in section 9 of this act; and

30 (iii) Ensuring covered products designated for collection do not
31 contain toxic substances;

32 (j) A description of how plan implementation will:

33 (i) Achieve equity in the provision of recycling collection
34 services in the state; and

35 (ii) Rely upon environmentally sound and socially just management
36 practices for worker health and safety;

37 (k) A description of how producer fees and fee modulation will
38 incorporate design for recycling and litter prevention as objectives,
39 consistent with activities and the mission of the litter tax imposed
40 by RCW 82.19.010 and authorized under chapter 70A.200 RCW;

1 (l) A plan for addressing contamination from covered products at
2 compost or other organics processing facilities and similar
3 facilities, including through decontamination equipment improvements
4 and conducting packaging contamination composition studies;

5 (m) A plan for education and outreach as required under section
6 16 of this act, including how cities and counties will be involved in
7 and reimbursed for education and outreach activities that support the
8 achievement of the reuse and recycling performance requirements under
9 section 8 of this act;

10 (n) A summary of the plan development stakeholder consultation
11 process undertaken consistent with section 5(3) of this act;

12 (o) The dispute resolution process to be used, as needed, with
13 residents, collectors, processors, producers, and end-market users of
14 materials; and

15 (p) Any other information to be included in the plan as required
16 by the department by rule.

17 (3) In addition to the components specified in subsection (2) of
18 this section, producer responsibility organizations implementing
19 plans on behalf of more than one producer must include the following
20 plan elements:

21 (a) A description of the structure and governance of the producer
22 responsibility organization, including the membership of the advisory
23 committee required under section 20 of this act; and

24 (b) A description of the collection and structure of the fees
25 owed by producers to be used to implement the plan, consistent with
26 section 10 of this act.

27 NEW SECTION. **Sec. 7.** COLLECTION AND MANAGEMENT. (1) Producers
28 must manage covered products in a manner consistent with the state's
29 solid waste management hierarchy established in RCW 70A.205.005.

30 (2) Covered products collected by the program must be managed in
31 an environmentally sound and socially just manner at facilities
32 operating with human health and environmental protection standards
33 that are broadly equivalent to or better than those required in the
34 United States and other countries that are members of the
35 organization for economic cooperation and development.

36 (3) Producer responsibility organizations implementing a plan
37 must:

38 (a) Include measures to track, verify, and publicly report that
39 covered products collected by the program are managed responsibly.

1 (b) Take measures to:

2 (i) Promote and facilitate reuse of covered products designed to

3 be reused;

4 (ii) Promote responsible recycling;

5 (iii) Meet the necessary quality standards for recycled materials

6 so that covered products collected by the program may be used to

7 manufacture new products; and

8 (iv) Ensure that covered products collected for recycling do not

9 contain toxic substances.

10 (c) Document how they have used domestic and local collection and

11 processing infrastructure and the extent to which the use of domestic

12 and local collection and processing infrastructure to meet the

13 requirements under this chapter is technologically feasible and

14 economically practical.

15 (4) (a) Prior to program use of any advanced technology for

16 conversion of postuse plastic polymers for the purpose of producing

17 recycled material to be counted toward reuse and recycling

18 performance targets, the producer responsibility organization must

19 provide the department with a third-party assessment prepared to

20 examine the impact of the advanced technology on the following:

21 (i) Air and water pollution and release or creation of any

22 hazardous pollutants; and

23 (ii) The greenhouse gas emissions resulting from products and

24 processes of the advanced technology facility, taking into account

25 the full life cycle including final use of products.

26 (b) The results of the assessment under (a) of this subsection

27 must, whenever reported and communicated, provide full disclosure of

28 geographical, temporal, and technological boundaries that have been

29 selected for the assessment.

30 (c) The person preparing the assessment under (a) of this

31 subsection may not be interested, directly or indirectly, in the

32 ownership or operation of the advanced recycling facility.

33 NEW SECTION. **Sec. 8.** REUSE AND RECYCLING PERFORMANCE

34 REQUIREMENTS. (1) To meet the reuse and recycling performance

35 requirements established in this section, a producer must:

36 (a) Demonstrate that all covered products are reusable,

37 recyclable, or compostable by January 1, 2030;

38 (b) Demonstrate that the covered products collected by the

39 program were managed consistent with section 7 of this act;

1 (c) Authenticate, verified by an independent third party, the
2 reuse and recycling rates of covered products, as specified under
3 subsections (2) through (4) of this section, and provide the
4 verification to the department as part of the annual reporting
5 requirements established under section 17 of this act.

6 (2) At minimum, each plan must achieve the following performance
7 requirements:

8 (a) By 2026, a minimum of 55 percent of all covered products
9 supplied into the state are reused or recycled, with a minimum of
10 five percent reused;

11 (b) By 2030, a minimum of 75 percent of all covered products
12 supplied into the state are reused or recycled, with a minimum of 10
13 percent reused;

14 (c) For each material category of covered products supplied into
15 the state, producer responsibility organizations must achieve the
16 following combined reuse and recycling rates:

Material category	By 2026 achieve the minimum combined reuse and recycle rates	By 2030 achieve the minimum combined reuse and recycle rates
Rigid plastic, including plastic beverage containers	25 percent	60 percent
Flexible plastic	10 percent	25 percent
Paper	60 percent	85 percent
Aluminum	55 percent	75 percent
Steel	45 percent	75 percent
Glass	70 percent	85 percent

30 (3) For the purposes of this chapter, the amount of recycled
31 material must be measured at the following calculation point for each
32 material category of covered products included in the plan:

33 (a) Rigid plastic material that:

34 (i) Does not undergo further processing before entering
35 pelletization, extrusion, molding, or advanced recycling for plastic
36 polymers;

37 (ii) Is flaked and does not undergo further processing before use
38 in a final product; or

1 (iii) Is compostable and is delivered to an industrial composting
2 facility under an agreement with that facility.

3 (b) Flexible plastic material that:

4 (i) Does not undergo further processing before entering
5 pelletization, extrusion, molding, or advanced recycling for plastic
6 polymers;

7 (ii) Is flaked and does not undergo further processing before use
8 in a final product; or

9 (iii) Is compostable and is delivered to an industrial composting
10 facility under an agreement with that facility.

11 (c) Paper material that:

12 (i) Does not undergo further processing before entering a pulping
13 operation; or

14 (ii) Is compostable and is delivered to an industrial composting
15 facility under an agreement with that facility.

16 (d) Aluminum material that does not undergo further processing
17 before entering a metal smelter or furnace.

18 (e) Steel material that does not undergo further processing
19 before entering a metal smelter or furnace.

20 (f) Glass material that does not undergo further processing
21 before entering a glass furnace or the production of filtration
22 media, abrasive materials, glass fiber insulation, and construction
23 materials.

24 (g) For materials that are not included in the material
25 categories listed in (a) through (f) of this subsection, the
26 calculation point must be proposed and described by the producer
27 responsibility organization in its plan and annual report and is
28 subject to approval by the department in order to be included in the
29 reuse and recycling rate calculation.

30 (4) For each material category of covered product included in the
31 plan, the combined reuse and recycling rate must be calculated as the
32 sum of the amount of reused material and recycled material managed by
33 the program in a given year, divided by the amount of covered
34 products supplied into the state in the same year, expressed as a
35 percentage, where:

36 (a) Covered products supplied into the state in a given year is
37 the amount calculated in accordance with section 17(2)(a) of this
38 act;

1 (b) Reused material is the amount of covered product managed by
2 the program in the same year that was sold or supplied for reuse for
3 their original or similar purpose or function; and

4 (c) Recycled material is the amount produced from covered
5 products managed by the program in the same year measured in
6 accordance with subsection (3) of this section.

7 (5) A producer that does not achieve the reuse and recycling
8 performance requirements established in subsection (2) of this
9 section, either individually or through a producer responsibility
10 organization, must submit a revised plan to the department no later
11 than 90 days after submitting an annual report as required under
12 section 17 of this act, in which the failure to achieve the reuse and
13 recycling performance requirements are identified. The revised plan
14 must include changes to the plan specifying how the program will be
15 modified to meet the requirements of this section.

16 NEW SECTION. **Sec. 9.** POSTCONSUMER RECYCLED CONTENT. (1) To meet
17 the postconsumer recycled content requirements established in this
18 section, a producer must authenticate the postconsumer recycled
19 content of covered products through third-party verification and
20 provide the verification to the department as part of the annual
21 reporting requirements established under section 17 of this act.

22 (2) A producer that sells, offers for sale, or distributes
23 plastic beverage containers in or into Washington must meet the
24 following annual minimum postconsumer recycled plastic content for
25 the total quantity of plastic beverage containers that are sold,
26 offered for sale, or distributed in Washington effective:

27 (a) January 1, 2025, through December 31, 2029: No less than 25
28 percent postconsumer recycled plastic by weight;

29 (b) On and after January 1, 2030: No less than 50 percent
30 postconsumer recycled plastic by weight.

31 (3) (a) For all other covered products, a producer responsibility
32 organization must meet the following annual minimum postconsumer
33 recycled content, by material category, for the total quantity of all
34 covered products except for plastic beverage containers that are
35 supplied into the state:

1	Material	By 2026 achieve	By 2030 achieve
2	category	average annual	average annual
3		minimum	minimum
4		postconsumer	postconsumer
5		recycled content	recycled content
6		of covered	of covered
7		products	products
8	Other rigid	30 percent	50 percent
9	plastic		
10	Flexible plastic	10 percent	30 percent
11	Paper packaging	50 percent	75 percent
12	Other paper	25 percent	50 percent
13	products		
14	Aluminum	50 percent	70 percent
15	Steel	30 percent	50 percent
16	Glass	40 percent	60 percent

17 (b) A producer responsibility organization may establish and
18 implement a mechanism for the generation and trading of postconsumer
19 recycled content credits for the purpose of achieving the minimum
20 recycled content as established under this subsection, to be
21 accompanied by authentication through third-party verification in
22 accordance with subsection (1) of this section.

23 (4) A producer that does not achieve the postconsumer recycled
24 content requirements established under subsections (2) and (3) of
25 this section, either individually or through a producer
26 responsibility organization, must submit a revised plan to the
27 department no later than 90 days after submitting an annual report as
28 required under section 17 of this act, in which the failure to
29 achieve the postconsumer recycled content requirements are
30 identified. The revised plan must include changes to the plan
31 specifying how the program will be modified to meet the requirements
32 of this section.

33 (5) (a) Beginning in 2025, and every other year thereafter, or at
34 the petition from a representative of the producer responsibility
35 organization but not more than annually, the department shall
36 consider whether the minimum postconsumer recycled content
37 requirements established under subsections (2) and (3) of this
38 section should be waived or reduced.

1 (b) The department must consider a petition from producers or
2 producer responsibility organizations within 60 days of receipt.

3 (6) A producer or producer responsibility organization may appeal
4 adjustments to the requirement for minimum postconsumer recycled
5 content as determined under section 4(7) of this act and subsection
6 (5) of this section to the pollution control hearings board within 30
7 days of the department's determination.

8 NEW SECTION. **Sec. 10.** FUNDING REQUIREMENTS. (1) A

9 nonreimbursable point-of-sale fee may not be charged to consumers to
10 recoup the costs of meeting producer obligations under this chapter.

11 (2) A producer responsibility organization implementing a plan
12 must fully fund all activities required under this chapter.

13 (3)(a) A producer responsibility organization implementing a plan
14 on behalf of other producers must develop a system to collect charges
15 from participating producers to cover the costs of plan
16 implementation in an environmentally sound and socially just manner
17 that encourages the use of design attributes that reduce the
18 environmental impacts of covered products, such as through the use of
19 eco-modulated fees to:

20 (i) Encourage designs intended to facilitate reuse and recycling;

21 (ii) Encourage the use of recycled content;

22 (iii) Discourage the use of problematic materials that increase
23 system costs of managing covered products; and

24 (iv) Encourage other design attributes that reduce the
25 environmental impacts of covered products including, but not limited
26 to, the potential to create litter.

27 (b) Any system of program charges owed by producers that includes
28 discounted charges or favorable treatment of covered products deemed
29 to be reusable must establish a basis for determining that products,
30 in practice, are typically reused a minimum number of times.

31 (4) Fees collected for department duties under section 4 of this
32 act may only reimburse costs directly associated with the
33 implementation, administration, and enforcement of this chapter.

34 NEW SECTION. **Sec. 11.** CONVENIENCE STANDARDS. (1) In every

35 jurisdiction in which covered products are sold or supplied to
36 consumers, a producer responsibility organization must ensure
37 convenient collection services are available for the full list of

1 covered products designated for collection in the plan. Convenient
2 collection services must be available to residents as follows:

3 (a) Curbside collection must be provided to residents in single-
4 family and multifamily residences wherever curbside garbage
5 collection services are provided to these entities, except for
6 covered products designated for alternate collection;

7 (b) In jurisdictions without curbside garbage collection, and in
8 all areas for covered products designated for alternate collection,
9 free and equitable access to permanent collection facilities must be
10 provided that are located at each solid waste transfer, processing,
11 or disposal site, and at additional locations as needed to provide
12 convenient access for residents. For the purposes of this section,
13 "convenient access" means:

14 (i) At least 90 percent of Washington residents have access to a
15 permanent collection site within a 15 mile radius and one additional
16 permanent site for every 30,000 residents of an urbanized area and
17 for every urban cluster of at least 30,000 residents unless otherwise
18 approved by the department.

19 (ii) A reasonable opportunity to drop off covered materials at
20 collection events for underserved areas where the population does not
21 have a permanent collection location within a 15 mile radius. The
22 producer responsibility organization, in consultation with the
23 department and the local community, must determine a reasonable
24 frequency and location of collection events to be held in underserved
25 areas. The producer responsibility organization must give special
26 consideration for providing opportunities to island and
27 geographically isolated populations;

28 (c) Under initial plan implementation, collection must be
29 provided in public places where recycling collection receptacles were
30 in place and managed by government agencies prior to the effective
31 date of this section.

32 (2) Every producer responsibility organization must identify in
33 its plan and on its website, in appropriate languages, each area
34 where curbside and alternative collection services are available, the
35 location of each permanent collection opportunity for covered
36 products, the types and locations of alternate collection methods
37 used, and the locations of public place collection services.

1 NEW SECTION. **Sec. 12.** OPTIONS FOR CONTRACTING WITH LOCAL
2 GOVERNMENTS—AUTHORITY TO COLLECT COVERED PRODUCTS. (1) The provisions
3 of this chapter do not:

4 (a) Obligate a county, city, or town that utilizes its contract
5 authority under RCW 81.77.130 for collection of source separated
6 recyclable materials from residents or a city or town that undertakes
7 collection of source separated recyclable materials from residents to
8 participate in a plan implemented by a producer or a producer
9 responsibility organization;

10 (b) Restrict the authority of a city under RCW 35.21.120,
11 35.21.130, and 35.21.152; or

12 (c) Restrict the authority of a county under RCW 36.58.040.

13 (2) A city or town in accordance with its authority under chapter
14 35.21 RCW, or county in accordance with its authority under chapter
15 36.58 RCW, may enter into contractual agreements with producers or
16 producer responsibility organizations under which the city, town, or
17 county:

18 (a) Collects covered products from residents in single-family and
19 multifamily residences within its jurisdiction; or

20 (b) Arranges for reimbursement from producers to cover the costs
21 incurred by the county, city, or town for collection of covered
22 products.

23 (3) Curbside collection of covered products as source separated
24 recyclable materials from residences in areas regulated by the
25 utilities and transportation commission under the provisions of
26 chapter 81.77 RCW must be provided:

27 (a) By a company that holds an applicable certificate issued by
28 the commission, except as authorized under subsection (4) of this
29 section;

30 (b) To residents in single-family and multifamily residences
31 wherever curbside garbage collection services are provided; and

32 (c) In a manner consistent with the requirements of this chapter.

33 (4) The utilities and transportation commission may exempt
34 collection and transport of covered products as source separated
35 recyclable materials from residences from the provisions of chapter
36 81.77 RCW in any areas of the state where the company holding an
37 applicable certificate:

38 (a) Did not provide collection of covered products as source
39 separated recyclable materials from residences prior to
40 implementation of this act; or

1 (b) Notifies the commission of its intention to relinquish the
2 authority to collect recyclable materials from residences granted
3 under its certificate.

4 (5) Cities and counties may carry out resident education and
5 outreach consistent with producer plan provisions under section 16 of
6 this act and be reimbursed for the costs of these initiatives,
7 subject to mutual agreement between the jurisdiction and the producer
8 responsibility organization, using an approach specified in the plan.

9 NEW SECTION. **Sec. 13.** SERVICE PROVIDER COST REIMBURSEMENT FOR
10 SERVICES REGULATED BY THE UTILITIES AND TRANSPORTATION COMMISSION. In
11 areas where collection of source separated recyclable materials from
12 residences is regulated by the utilities and transportation
13 commission under chapter 81.77 RCW:

14 (1) Producers must provide reimbursement to the company granted a
15 certificate to provide the service in accordance with the rates
16 approved by the commission, including all associated taxes and fees
17 that would be otherwise charged to residential customers directly or
18 indirectly for recycling service; and

19 (2) The commission may review the financial operations of any
20 private recycling business that receives source separated recyclable
21 materials collected from residences from a company granted a
22 certificate to provide the service for the purposes of regulating
23 rates and fees charged to producers for handling of these materials.

24 NEW SECTION. **Sec. 14.** SERVICE PROVIDER AGREEMENTS. Except as
25 provided for in section 12 of this act, to carry out producer
26 responsibilities under this act, producers that enter into
27 contractual agreements with service providers, including cities,
28 counties, and private entities must:

29 (1) Use open, competitive, and fair procurement practices;

30 (2) Compensate cities and counties that provide collection or
31 outreach services under section 11 of this act for all reasonable
32 costs associated with the services provided;

33 (3) Ensure that all contracted service providers:

34 (a) Meet minimum operating standards, including the requirements
35 of this chapter and chapter 70A.205 RCW;

36 (b) Operate in an environmentally sound and socially just manner;

37 (c) Meet high labor standards, including family-level wages,
38 providing benefits including health care and pensions, and

1 demonstrate procurement from and contracts with women, minority, or
2 veteran-owned businesses; and

3 (d) Provide fair opportunities regardless of ethnicity, race,
4 gender, age, disability, religion, sexual orientation, or national
5 origin; and

6 (4) Ensure that contracted service providers maintain records and
7 provide the producer responsibility organization with verifiable
8 chain of custody documentation and other documentation necessary to
9 evaluate the performance relative to the requirements of this
10 chapter. Producers, individually or through a producer responsibility
11 organization, must submit the records and documentation required
12 under this subsection to the department, upon request by the
13 department.

14 NEW SECTION. **Sec. 15.** INFRASTRUCTURE INVESTMENTS. (1) Each
15 producer responsibility organization must invest in reuse and
16 recycling infrastructure and market development in Washington state.
17 This may include, but is not limited to:

18 (a) Installing or upgrading equipment to improve sorting of
19 covered products or mitigating the impacts of covered products to
20 other commodities at existing sorting and processing facilities; and

21 (b) Capital expenditures for new technology, equipment, and
22 facilities.

23 (2) Infrastructure investments must be detailed in the annual
24 report submitted to the department.

25 NEW SECTION. **Sec. 16.** EDUCATION AND OUTREACH. Each plan
26 implemented by producer responsibility organizations under this
27 chapter must include an education and outreach component that is
28 designed to provide clear, equitable, socially just, and consistent
29 information to residents and support the achievement of the reuse and
30 recycling performance requirements under section 8 of this act that,
31 at minimum:

32 (1) Uses consistent and easy to understand messaging and
33 education statewide adapted to the diverse communities of the state,
34 with the aim of reducing resident confusion regarding the
35 recyclability and end-of-life management options available for
36 different covered products;

37 (2) Establishes a process for answering customer questions and
38 resolving customer concerns;

1 (3) Provides outreach and educational resources that are
2 conceptually, linguistically, and culturally accurate for the
3 communities served and reach the state's diverse ethnic populations,
4 including through meaningful consultation with communities that bear
5 disproportionately higher levels of adverse environmental and social
6 justice impacts;

7 (4) Develops and provides outreach and educational materials
8 about the program to be used by retailers, collectors, government
9 agencies, and nonprofit organizations;

10 (5) Informs producers and retailers about their obligation to
11 sell only covered products of producers participating in an approved
12 plan; and

13 (6) Evaluates the effectiveness of education and outreach efforts
14 for the purposes of making progress toward performance requirements
15 established in this chapter.

16 NEW SECTION. **Sec. 17.** ANNUAL REPORTING ON ACTIVITIES. (1)
17 Beginning September 1, 2026, and each September 1st thereafter, each
18 producer responsibility organization must submit an annual report to
19 the department for the preceding calendar year of plan
20 implementation. The annual report must include plan implementation
21 activities as required by this chapter.

22 (2) Each annual report must include the following information:

23 (a) The quantity of covered products supplied, including:

24 (i) A list and brief explanation of the covered products supplied
25 or sold in or into Washington to consumers by each producer and by
26 brand participating in the program and a list of covered products
27 supplied that are designated for collection through curbside
28 collection or by an alternate means under the approved plan;

29 (ii) The weight and, where applicable and determined by the
30 department to be necessary, number of units, by material category, of
31 covered products supplied into the state to consumers for residential
32 use, to be used for the purposes of calculating the reuse and
33 recycling rate requirements under section 8 of this act; and

34 (iii) A description of how the producer responsibility
35 organization has distinguished and apportioned the quantities of
36 packaging and paper supplied to consumers for residential use, which
37 are considered covered products under this chapter, from quantities
38 supplied for nonresidential use that are not considered covered
39 products under this chapter;

1 (b) The quantity of covered products supplied that were designed
2 to be reused or refilled, by material category, by weight and, where
3 applicable and determined by the department to be necessary, number
4 of units;

5 (c) The quantity of postconsumer recycled content, by material
6 category, of covered products supplied, measured in accordance with
7 the requirements in section 9 of this act and including the total
8 postconsumer content by: (i) Weight; and (ii) as a percentage of
9 total weight;

10 (d) The quantity of material managed and methods of management by
11 the program, including the weight:

12 (i) Of all material managed by the program, by material category,
13 including covered products and other materials;

14 (ii) And number of units, where applicable and determined by the
15 department to be necessary, by material category, of reused material
16 managed by the program, measured as defined in section 8 of this act;

17 (iii) And number of units, where applicable and determined by the
18 department to be necessary, by material category, of recycled
19 material managed by the program, measured as defined in section 8 of
20 this act;

21 (iv) By material category, of material managed by the program
22 sent for energy recovery;

23 (v) By material category, of material managed by the program sent
24 for landfill disposal; and

25 (vi) By material category, of material managed by the program for
26 other methods of management not listed in (d)(ii) through (v) of this
27 subsection, accompanied by a description of each other method used;

28 (e) The final destinations of recycled material managed by the
29 program, including a list of:

30 (i) Names and locations of end users or reprocessors that
31 received recycled material managed by the program, by material
32 category; and

33 (ii) Descriptions of the forms of recycled material managed by
34 the program that were sold or supplied to the end users or
35 reprocessors;

36 (f) The reuse and recycling rates achieved by the program, for
37 each material category of covered product supplied and for all
38 covered products supplied into the state, calculated in accordance
39 with the requirements in section 8 (3) and (4) of this act;

1 (g) A description of the levels and types of physical
2 contamination in the materials collected and managed by the program;

3 (h) Activities undertaken to meet the convenience standards for
4 collection of covered products as established under section 11 of
5 this act, including:

6 (i) A list of jurisdictions and service providers where curbside
7 collection services are provided by the program, accompanied by a
8 brief description of services provided, locations and operating hours
9 of permanent collection facilities, types and locations of alternate
10 collection methods used, and locations of public place collection
11 services; and

12 (ii) Collection service accessibility and convenience metrics,
13 including population coverage, the geographic distribution of
14 collection, and the distance of collection locations to state
15 residents;

16 (i) A description of the investments made in reuse and recycling
17 infrastructure and market development in Washington state, including
18 the amount spent expressed as a percentage of the program's total
19 annual expenditures;

20 (j) A description of education and outreach activities undertaken
21 and a summary of the evaluation of education and outreach
22 effectiveness;

23 (k) A description of actions taken to:

24 (i) Reduce the life-cycle environmental impacts of covered
25 products supplied or sold in or into Washington and to increase
26 reuse, refill, and recyclability of covered products;

27 (ii) Increase collection and recycling system efficiency,
28 including:

29 (A) The establishment of any financial incentives for collection;

30 (B) Reductions in contamination through public education and
31 outreach or labeling of products, infrastructure upgrades, and market
32 development; and

33 (C) The establishment of new collection services or locations;

34 (iii) Provide and expand public place recycling, coordinate with
35 the department on litter prevention measures, and reduce
36 contamination from packaging at compost and other organics processing
37 facilities;

38 (iv) Address toxic substances in covered products;

39 (v) Achieve equity in the provision of covered product collection
40 services in the state, including in communities bearing

1 disproportionate burdens from environmental, social justice, and
2 economic impacts; and

3 (vi) Manage covered products in an environmentally sound and
4 socially just manner that exceeds human health, safety, and
5 environmental protection standards;

6 (1) An assessment of the greenhouse gas emissions associated with
7 program operations, including both direct emissions and indirect
8 emissions with all activities, and including the avoided emissions
9 from source reduction, reuse, and recycling of covered products into
10 new products and materials;

11 (m) Identification of the governing board members of a producer
12 responsibility organization and the identification of the members of
13 the advisory committee formed under section 20 of this act;

14 (n) A summary of advisory committee engagement and input as well
15 as comments received from additional stakeholders and community
16 members; and

17 (o) Any other information required by the department, as adopted
18 by rule.

19 (3) (a) Prior to the submission of the annual report, all data and
20 information that is material to the department's review of the
21 program's compliance with the requirements of this chapter must be
22 annually audited and verified by an independent third party.

23 (b) Annual independent auditing and verification must:

24 (i) Include documentation of the reuse and recycling rate and
25 recycled product content;

26 (ii) Encompass the management of materials from the point of
27 collection through processing and sale of recycled materials; and

28 (iii) Determine whether all facilities involved in the
29 collection, processing, and final disposition of collected covered
30 products are managed in an environmentally sound and socially just
31 manner.

32 (4) The department may adopt rules to establish annual reporting
33 requirements, information to be included, and third-party
34 verification requirements necessary for the department to determine
35 the program's compliance with requirements of this chapter.

36 NEW SECTION. **Sec. 18.** PLAN APPROVAL, UPDATES, AND REVISIONS.

37 (1) (a) A producer responsibility organization must submit a plan to
38 the department that addresses five calendar years of operation. A
39 plan is valid for no more than five years.

1 (i) Within three years of implementation of its initial plan, a
2 producer responsibility organization must submit an updated plan for
3 the following five calendar years to address changes in the
4 operations and activities of the program.

5 (ii) For all subsequent plans submitted after the initial plan, a
6 producer responsibility organization must submit, one year prior to
7 the expiration of the plan, an updated plan for the following five
8 calendar years of operation to address changes in the operations and
9 activities of the program.

10 (b) If the reuse and recycling performance requirements
11 established under section 8 of this act have not been met as of the
12 time of plan update, an independent evaluation must be conducted of
13 the producer responsibility organization's efforts to implement the
14 approved plan. The evaluation must provide information for the
15 producer responsibility organization to use to target and improve
16 reuse and recycling rate performance.

17 (c) A producer responsibility organization must carry out the
18 consultation process established in section 5 of this act prior to
19 the submission of each plan and plan update.

20 (2)(a) Producers may choose to revise their plan if significant
21 changes have occurred.

22 (b) The department may require a producer responsibility
23 organization to revise its plan more frequently than every five years
24 if:

25 (i) The program and activities to implement the plan fail to
26 achieve the reuse and recycling performance requirements established
27 in section 8 of this act or otherwise fail to achieve significant
28 requirements under this chapter; or

29 (ii) There are significant changes to the regulatory or economic
30 environment in which plan activities are being carried out.

31 (3) The department must review new, updated, and revised plans
32 submitted by producer responsibility organizations as required in
33 section 4(4) of this act.

34 NEW SECTION. **Sec. 19.** PRIVATE RIGHT OF ACTION. (1) A producer
35 or producer responsibility organization implementing an approved plan
36 may bring a civil action or actions to recover costs, damages, and
37 fees, as specified in this section, from any producer who sells or
38 otherwise makes available in Washington covered products not included
39 in an approved plan. An action under this section may be brought

1 against one or more defendants. An action may only be brought against
2 a defendant producer when the producer responsibility organization or
3 a producer incurs costs in Washington, including reasonable
4 incremental administrative and program promotional costs, in excess
5 of \$1,000 to collect, transport, and recycle or otherwise dispose of
6 the covered products of a nonparticipating producer.

7 (2) A producer or producer responsibility organization may bring
8 a civil action against another producer or producer responsibility
9 organization that underperforms on its collection or recycling rate
10 obligations under this chapter by failing to collect and provide for
11 the end-of-life management of covered products in an amount roughly
12 equivalent to the national market share of the covered products of
13 the producer or of the national market share of covered products of
14 all producers participating in a plan implemented by a producer
15 responsibility organization. Producers participating in a producer
16 responsibility organization that underperforms its obligations under
17 this chapter are liable jointly and severally.

18 (3) The remedies provided in this section are in addition to the
19 enforcement authority of the department and do not limit and are not
20 limited by a decision by the department to impose a civil penalty or
21 issue an order under chapter 43.21B RCW. The department is not
22 required to audit, participate in, or provide assistance to a
23 producer or producer responsibility organization pursuing a civil
24 action authorized under this subsection.

25 (4) A producer responsibility organization or producer may only
26 bring a civil action if the producer or the producer responsibility
27 organization has, at least 30 days prior, provided the
28 underperforming producer or producer responsibility organization with
29 a written warning regarding the requirements of this chapter. The
30 written warning must inform a producer or producer responsibility
31 organization that it must participate in an approved plan or
32 otherwise come into compliance with the requirements of this chapter
33 within 30 days of the notice. A civil action may only be brought
34 against an underperforming producer or producer responsibility
35 organization who remains in violation of the requirements of this
36 chapter for at least 30 days after receiving the written warning.

37 NEW SECTION. **Sec. 20.** ADVISORY COMMITTEE. (1) Each producer and
38 producer responsibility organization must establish an advisory
39 committee composed of persons relevant to the program's covered

1 products and Washington state residents. The department may require
2 individual producers operating an individual program to establish an
3 advisory committee that meets the requirements established under
4 subsection (2) of this section.

5 (2) At a minimum, the advisory committee must include at least
6 one person representing each of the following:

7 (a) Cities, including a representative located in east and west
8 of the Cascade mountains from:

9 (i) Small and large cities; and

10 (ii) Cities located in urban and rural counties;

11 (b) Counties, including a representative located in east and west
12 of the Cascade mountains from:

13 (i) Geographically small and large counties; and

14 (ii) Urban and rural counties;

15 (c) Indian tribes;

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

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

18 (f) Public or private reuse and waste prevention organizations;

19 (g) Recycled plastic and paper feedstock users;

20 (h) Public place recycling programs;

21 (i) Freshwater and marine litter programs;

22 (j) Environmental organizations;

23 (k) Consumer organizations; and

24 (l) Communities that bear disproportionately higher levels of
25 adverse environmental impacts.

26 (3) If requested, each producer and producer responsibility
27 organization must reimburse representatives of community groups,
28 tribal, and nonprofit members for their expenses including, but not
29 limited to, childcare, travel expenses, information technology
30 supplies and services, and wage replacement that are related to
31 participating on the advisory committee. Other members may be
32 compensated for travel expenses on an as needed basis to ensure their
33 ability to participate.

34 (4) Each producer responsibility organization must:

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

36 (b) Request and consider comments from its advisory committee
37 prior to submission of annual reports, plan updates, and revisions to
38 the department;

1 (c) Document all comments received and responsive answers to the
2 department as an appendix submitted in annual reports, plan updates,
3 and revisions; and

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

6 NEW SECTION. **Sec. 21.** (1) For the purposes of this section,
7 "expanded polystyrene" means blown polystyrene and expanded and
8 extruded foams that are thermoplastic petrochemical materials
9 utilizing a styrene monomer and processed by any number of techniques
10 including, but not limited to, fusion of polymer spheres (expandable
11 bead polystyrene), injection molding, foam molding, and extrusion-
12 blow molding (extruded foam polystyrene).

13 (2) Beginning June 1, 2023, it is prohibited to sell or
14 distribute into the state the following expanded polystyrene
15 products:

16 (a) A portable container used for cold storage, except for
17 expanded polystyrene containers used for drugs, medical devices, and
18 biological materials as defined in the federal food, drug, and
19 cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable
20 commodities from a wholesale or retail establishment;

21 (b) Food service products that include food containers, plates,
22 clam shell-style containers, and hot and cold beverage cups. For the
23 purposes of this subsection (2)(b), food service products do not
24 include packaging for raw, uncooked, or butchered meat, fish,
25 poultry, or seafood, vegetables, fruit, or egg cartons; and

26 (c) Void filling packaging products, which means loose fill
27 packaging material, also referred to as packing peanuts.

28 (3) Any void filling loose fill packaging materials sold or
29 distributed into the state must be compostable.

30 (4)(a) The department of ecology may adopt rules as necessary for
31 the purpose of implementing, administering, and enforcing this
32 section.

33 (b) The department of ecology must:

34 (i) Prepare and post on its website information regarding the
35 prohibitions on the sale and distribution of covered products. The
36 department of ecology may develop culturally appropriate and
37 translated educational materials and resources for the state's
38 diverse ethnic populations from existing materials used by local
39 jurisdictions and other states.

1 (ii) Provide technical assistance and guidance to manufacturers
2 of covered products, as requested.

3 (iii) Provide written notification and offer information and
4 assistance to manufacturers and distributors that sell or offer to
5 sell or distribute covered products who are in violation of this
6 chapter. For the purposes of this section, written notification
7 serves as notice of the violation. The department of ecology must
8 issue at least two notices of violation by certified mail to a
9 manufacturer or distributor prior to assessing a penalty.

10 (5) (a) A manufacturer of products in violation of this section is
11 subject to a civil penalty not to exceed \$250 for each violation in
12 the case of a first offense. Manufacturers that are repeat violators
13 are subject to a civil penalty not to exceed \$1,000 for each repeat
14 offense. Penalties collected under this section must be deposited in
15 the model toxics control operating account created in RCW
16 70A.305.180.

17 (b) Penalties issued under this section are appealable to the
18 pollution control hearings board established in chapter 43.21B RCW.

19 (6) A city, town, county, or municipal corporation may not
20 implement a local ordinance restricting products specified under
21 subsection (2) of this section unless the ordinance was filed by
22 April 1, 2020, and enacted by June 1, 2020. An ordinance restricting
23 covered products that was not enacted as of June 1, 2020, is
24 preempted by this section.

25 (7) The definitions in section 2 of this act do not apply to this
26 section.

27 NEW SECTION. **Sec. 22.** ACCOUNT. The responsible packaging
28 management account is created in the custody of the state treasury.
29 All receipts received by the department under this chapter must be
30 deposited in the account. Only the director of the department or the
31 director's designee may authorize expenditures from the account. The
32 account is subject to the allotment procedures under chapter 43.88
33 RCW, but an appropriation is not required for expenditures.
34 Expenditures from the account may be used by the department only for
35 implementing, administering, and enforcing the requirements of this
36 chapter.

37 **Sec. 23.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035
38 are each reenacted and amended to read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and
2 decide appeals from the following decisions of the department, the
3 director, local conservation districts, the air pollution control
4 boards or authorities as established pursuant to chapter 70A.15 RCW,
5 local health departments, the department of natural resources, the
6 department of fish and wildlife, the parks and recreation commission,
7 and authorized public entities described in chapter 79.100 RCW:

8 (a) Civil penalties imposed pursuant to RCW 18.104.155, section
9 21 of this act, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040,
10 70A.350.070, 70A.515.060, section 4 of this act, 76.09.170,
11 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
12 90.56.310, 90.56.330, and 90.64.102.

13 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
14 43.27A.190, section 21 of this act, 70A.15.2520, 70A.15.3010,
15 70A.300.120, 70A.350.070, section 4 of this act, 86.16.020,
16 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17 (c) Except as provided in RCW 90.03.210(2), the issuance,
18 modification, or termination of any permit, certificate, or license
19 by the department or any air authority in the exercise of its
20 jurisdiction, including the issuance or termination of a waste
21 disposal permit, the denial of an application for a waste disposal
22 permit, the modification of the conditions or the terms of a waste
23 disposal permit, or a decision to approve or deny an application for
24 a solid waste permit exemption under RCW 70A.205.260.

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

27 (e) Decisions of local health departments regarding the issuance
28 and enforcement of permits to use or dispose of biosolids under RCW
29 70A.226.090.

30 (f) Decisions of the department regarding waste-derived
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
32 decisions of the department regarding waste-derived soil amendments
33 under RCW 70A.205.145.

34 (g) Decisions of local conservation districts related to the
35 denial of approval or denial of certification of a dairy nutrient
36 management plan; conditions contained in a plan; application of any
37 dairy nutrient management practices, standards, methods, and
38 technologies to a particular dairy farm; and failure to adhere to the
39 plan review and approval timelines in RCW 90.64.026.

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

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

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

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
14 comply, to issue a civil penalty, or to issue a notice of intent to
15 disapprove applications.

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

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

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

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

26 (b) Hearings conducted by the department pursuant to RCW
27 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
28 70A.15.3110, and 90.44.180.

29 (c) Appeals of decisions by the department under RCW 90.03.110
30 and 90.44.220.

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

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

36 **Sec. 24.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to
37 read as follows:

38 (1) Any civil penalty provided in RCW 18.104.155, section 21 of
39 this act, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, section

1 4 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
2 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by
3 a notice in writing, either by certified mail with return receipt
4 requested or by personal service, to the person incurring the penalty
5 from the department or the local air authority, describing the
6 violation with reasonable particularity. For penalties issued by
7 local air authorities, within thirty days after the notice is
8 received, the person incurring the penalty may apply in writing to
9 the authority for the remission or mitigation of the penalty. Upon
10 receipt of the application, the authority may remit or mitigate the
11 penalty upon whatever terms the authority in its discretion deems
12 proper. The authority may ascertain the facts regarding all such
13 applications in such reasonable manner and under such rules as it may
14 deem proper and shall remit or mitigate the penalty only upon a
15 demonstration of extraordinary circumstances such as the presence of
16 information or factors not considered in setting the original
17 penalty.

18 (2) Any penalty imposed under this section may be appealed to the
19 pollution control hearings board in accordance with this chapter if
20 the appeal is filed with the hearings board and served on the
21 department or authority thirty days after the date of receipt by the
22 person penalized of the notice imposing the penalty or thirty days
23 after the date of receipt of the notice of disposition by a local air
24 authority of the application for relief from penalty.

25 (3) A penalty shall become due and payable on the later of:

26 (a) Thirty days after receipt of the notice imposing the penalty;

27 (b) Thirty days after receipt of the notice of disposition by a
28 local air authority on application for relief from penalty, if such
29 an application is made; or

30 (c) Thirty days after receipt of the notice of decision of the
31 hearings board if the penalty is appealed.

32 (4) If the amount of any penalty is not paid to the department
33 within thirty days after it becomes due and payable, the attorney
34 general, upon request of the department, shall bring an action in the
35 name of the state of Washington in the superior court of Thurston
36 county, or of any county in which the violator does business, to
37 recover the penalty. If the amount of the penalty is not paid to the
38 authority within thirty days after it becomes due and payable, the
39 authority may bring an action to recover the penalty in the superior
40 court of the county of the authority's main office or of any county

1 in which the violator does business. In these actions, the procedures
2 and rules of evidence shall be the same as in an ordinary civil
3 action.

4 (5) All penalties recovered shall be paid into the state treasury
5 and credited to the general fund except those penalties imposed
6 pursuant to RCW 18.104.155, which shall be credited to the
7 reclamation account as provided in RCW 18.104.155(7), RCW
8 70A.15.3160, the disposition of which shall be governed by that
9 provision, RCW 70A.300.090, which shall be credited to the model
10 toxics control operating account created in RCW 70A.305.180, RCW
11 90.56.330, which shall be credited to the coastal protection fund
12 created by RCW 90.48.390, and RCW 70A.355.070, which shall be
13 credited to the underground storage tank account created by RCW
14 70A.355.090.

15 **Sec. 25.** RCW 70A.205.005 and 2002 c 299 s 3 are each amended to
16 read as follows:

17 The legislature finds:

18 (1) Continuing technological changes in methods of manufacture,
19 packaging, and marketing of consumer products, together with the
20 economic and population growth of this state, the rising affluence of
21 its citizens, and its expanding industrial activity have created new
22 and ever-mounting problems involving disposal of garbage, refuse, and
23 solid waste materials resulting from domestic, agricultural, and
24 industrial activities.

25 (2) Traditional methods of disposing of solid wastes in this
26 state are no longer adequate to meet the ever-increasing problem.
27 Improper methods and practices of handling and disposal of solid
28 wastes pollute our land, air and water resources, blight our
29 countryside, adversely affect land values, and damage the overall
30 quality of our environment.

31 (3) Considerations of natural resource limitations, energy
32 shortages, economics and the environment make necessary the
33 development and implementation of solid waste recovery and/or
34 recycling plans and programs.

35 (4) Waste reduction must become a fundamental strategy of solid
36 waste management. It is therefore necessary to change manufacturing
37 and purchasing practices and waste generation behaviors to reduce the
38 amount of waste that becomes a governmental responsibility.

1 (5) Source separation of waste must become a fundamental strategy
2 of solid waste management. Collection and handling strategies should
3 have, as an ultimate goal, the source separation of all materials
4 with resource value or environmental hazard.

5 (6) (a) It should be the goal of every person and business to
6 minimize their production of wastes and to separate recyclable or
7 hazardous materials from mixed waste.

8 (b) It is the responsibility of state, county, and city
9 governments to provide for a waste management infrastructure to fully
10 implement waste reduction and source separation strategies and to
11 process and dispose of remaining wastes in a manner that is
12 environmentally safe and economically sound. It is further the
13 responsibility of state, county, and city governments to monitor the
14 cost-effectiveness and environmental safety of combusting separated
15 waste, processing mixed municipal solid waste, and recycling
16 programs.

17 (c) It is the responsibility of county and city governments to
18 assume primary responsibility for solid waste management and to
19 develop and implement aggressive and effective waste reduction and
20 source separation strategies.

21 (d) It is the responsibility of state government to ensure that
22 local governments are providing adequate source reduction and
23 separation opportunities and incentives to all, including persons in
24 both rural and urban areas, and nonresidential waste generators such
25 as commercial, industrial, and institutional entities, recognizing
26 the need to provide flexibility to accommodate differing population
27 densities, distances to and availability of recycling markets, and
28 collection and disposal costs in each community; and to provide
29 county and city governments with adequate technical resources to
30 accomplish this responsibility.

31 (e) It is the responsibility of producers to provide for the
32 responsible management of covered products.

33 (7) Environmental and economic considerations in solving the
34 state's solid waste management problems requires strong consideration
35 by local governments of regional solutions and intergovernmental
36 cooperation.

37 (8) The following priorities for the collection, handling, and
38 management of solid waste are necessary and should be followed in
39 descending order as applicable:

40 (a) Waste reduction;

1 (b) Recycling, with source separation of recyclable materials as
2 the preferred method;

3 (c) Energy recovery, incineration, or landfill of separated
4 waste;

5 (d) Energy recovery, incineration, or landfill of mixed municipal
6 solid wastes.

7 (9) It is the state's goal to achieve a fifty percent recycling
8 rate by 2007.

9 (10) It is the state's goal that programs be established to
10 eliminate residential or commercial yard debris in landfills by 2012
11 in those areas where alternatives to disposal are readily available
12 and effective.

13 (11) Steps should be taken to make recycling at least as
14 affordable and convenient to the ratepayer as mixed waste disposal.

15 (12) It is necessary to compile and maintain adequate data on the
16 types and quantities of solid waste that are being generated and to
17 monitor how the various types of solid waste are being managed.

18 (13) Vehicle batteries should be recycled and the disposal of
19 vehicle batteries into landfills or incinerators should be
20 discontinued.

21 (14) Excessive and nonrecyclable packaging of products should be
22 avoided.

23 (15) Comprehensive education should be conducted throughout the
24 state so that people are informed of the need to reduce, source
25 separate, and recycle solid waste.

26 (16) All governmental entities in the state should set an example
27 by implementing aggressive waste reduction and recycling programs at
28 their workplaces and by purchasing products that are made from
29 recycled materials and are recyclable.

30 (17) To ensure the safe and efficient operations of solid waste
31 disposal facilities, it is necessary for operators and regulators of
32 landfills and incinerators to receive training and certification.

33 (18) It is necessary to provide adequate funding to all levels of
34 government so that successful waste reduction and recycling programs
35 can be implemented.

36 (19) The development of stable and expanding markets for
37 recyclable materials is critical to the long-term success of the
38 state's recycling goals. Market development must be encouraged on a
39 state, regional, and national basis to maximize its effectiveness.
40 The state shall assume primary responsibility for the development of

1 a multifaceted market development program to carry out the purposes
2 of chapter 431, Laws of 1989.

3 (20) There is an imperative need to anticipate, plan for, and
4 accomplish effective storage, control, recovery, and recycling of
5 discarded tires and other problem wastes with the subsequent
6 conservation of resources and energy.

7 **Sec. 26.** RCW 70A.205.010 and 2005 c 394 s 2 are each amended to
8 read as follows:

9 The purpose of this chapter is to establish a comprehensive
10 statewide program for solid waste handling, and solid waste recovery
11 and/or recycling which will prevent land, air, and water pollution
12 and conserve the natural, economic, and energy resources of this
13 state. To this end it is the purpose of this chapter:

14 (1) To assign primary responsibility for adequate solid waste
15 handling to local government, reserving to the state, however, those
16 functions necessary to assure effective programs throughout the
17 state, and reserving to producers responsibility for the management
18 of covered products;

19 (2) To provide for adequate planning for solid waste handling by
20 local government;

21 (3) To provide for the adoption and enforcement of basic minimum
22 performance standards for solid waste handling, including that all
23 sites where recyclable materials are generated and transported from
24 shall provide a separate container for solid waste;

25 (4) To encourage the development and operation of waste recycling
26 facilities needed to accomplish the management priority of waste
27 recycling, to promote consistency in the requirements for such
28 facilities throughout the state, and to ensure that recyclable
29 materials diverted from the waste stream for recycling are routed to
30 facilities in which recycling occurs;

31 (5) To provide technical and financial assistance to local
32 governments in the planning, development, and conduct of solid waste
33 handling programs;

34 (6) To encourage storage, proper disposal, and recycling of
35 discarded vehicle tires and to stimulate private recycling programs
36 throughout the state; and

37 (7) To encourage the development and operation of waste recycling
38 facilities and activities needed to accomplish the management
39 priority of waste recycling and to promote consistency in the

1 permitting requirements for such facilities and activities throughout
2 the state.

3 It is the intent of the legislature that local governments be
4 encouraged to use the expertise of private industry and to contract
5 with private industry to the fullest extent possible to carry out
6 solid waste recovery and/or recycling programs.

7 **Sec. 27.** RCW 70A.205.115 and 2020 c 20 s 1171 are each amended
8 to read as follows:

9 (1) Each local solid waste advisory committee shall conduct one
10 or more meetings for the purpose of determining how local private
11 recycling and solid waste collection businesses may participate in
12 the development and implementation of programs to collect source
13 separated materials from residences, and to process and market
14 materials collected for recycling. The meetings shall include local
15 private recycling businesses, private solid waste collection
16 companies operating within the jurisdiction, and the local solid
17 waste planning agencies. The meetings shall be held during the
18 development of the waste reduction and recycling element or no later
19 than one year prior to the date that a jurisdiction is required to
20 submit the element under RCW 70A.205.075(2).

21 (2) The meeting requirement under subsection (1) of this section
22 shall apply whenever a city or county develops or amends the waste
23 reduction and recycling element required under this chapter.
24 Jurisdictions having approved waste reduction and recycling elements
25 or having initiated a process for the selection of a service provider
26 as of May 21, 1991, do not have to comply with the requirements of
27 subsection (1) of this section until the next revisions to the waste
28 reduction and recycling element are made or required.

29 (3) After the waste reduction and recycling element is approved
30 by the local legislative authority but before it is submitted to the
31 department for approval, the local solid waste advisory committee
32 shall hold at least one additional meeting to review the element.

33 (4) For the purpose of this section, "private recycling business"
34 means any private for-profit or private not-for-profit business that
35 engages in the processing and marketing of recyclable materials.

36 (5) Beginning January 1, 2026, a jurisdiction shall, at a
37 minimum, incorporate by reference the plans of producer
38 responsibility organizations established in the jurisdiction under

1 chapter 70A. - - - RCW (the new chapter created in section 36 of this
2 act) to fulfill this requirement.

3 **Sec. 28.** RCW 70A.205.045 and 2020 c 20 s 1163 are each amended
4 to read as follows:

5 Each county and city comprehensive solid waste management plan
6 shall include the following:

7 (1) A detailed inventory and description of all existing solid
8 waste handling facilities including an inventory of any deficiencies
9 in meeting current solid waste handling needs.

10 (2) The estimated long-range needs for solid waste handling
11 facilities projected twenty years into the future.

12 (3) A program for the orderly development of solid waste handling
13 facilities in a manner consistent with the plans for the entire
14 county which shall:

15 (a) Meet the minimum functional standards for solid waste
16 handling adopted by the department and all laws and regulations
17 relating to air and water pollution, fire prevention, flood control,
18 and protection of public health;

19 (b) Take into account the comprehensive land use plan of each
20 jurisdiction;

21 (c) Contain a six year construction and capital acquisition
22 program for solid waste handling facilities; and

23 (d) Contain a plan for financing both capital costs and
24 operational expenditures of the proposed solid waste management
25 system.

26 (4) A program for surveillance and control.

27 (5) A current inventory and description of solid waste collection
28 needs and operations within each respective jurisdiction which shall
29 include:

30 (a) Any franchise for solid waste collection granted by the
31 utilities and transportation commission in the respective
32 jurisdictions including the name of the holder of the franchise and
33 the address of his or her place of business and the area covered by
34 the franchise;

35 (b) Any city solid waste operation within the county and the
36 boundaries of such operation;

37 (c) The population density of each area serviced by a city
38 operation or by a franchised operation within the respective
39 jurisdictions;

1 (d) The projected solid waste collection needs for the respective
2 jurisdictions for the next six years.

3 (6) A comprehensive waste reduction and recycling element that,
4 in accordance with the priorities established in RCW 70A.205.005,
5 provides programs that (a) reduce the amount of waste generated, (b)
6 provide incentives and mechanisms for source separation, and (c)
7 establish recycling opportunities for the source separated waste.

8 (7) The waste reduction and recycling element shall include the
9 following:

10 (a) Waste reduction strategies, which may include strategies to
11 reduce wasted food and food waste that are designed to achieve the
12 goals established in RCW 70A.205.715(1) and that are consistent with
13 the plan developed in RCW 70A.205.715(3);

14 (b) Source separation strategies, including:

15 (i) Programs for the collection of source separated materials
16 from residences in urban and rural areas, including programs that are
17 the responsibility of producer responsibility organizations in
18 chapter 70A. - - - RCW (the new chapter created in section 36 of this
19 act). ((In—urban—areas,—these)) These programs shall include
20 collection of source separated recyclable materials from single and
21 multiple-family residences, unless the department approves an
22 alternative program, according to the criteria in the planning
23 guidelines. Such criteria shall include: Anticipated recovery rates
24 and levels of public participation, availability of environmentally
25 sound disposal capacity, access to markets for recyclable materials,
26 unreasonable cost impacts on the ratepayer over the six-year planning
27 period, utilization of environmentally sound waste reduction and
28 recycling technologies, and other factors as appropriate. ((In—rural—
29 areas,—these)) These programs shall also include but not be limited
30 to drop-off boxes, buy-back centers, or a combination of both, at
31 each solid waste transfer, processing, or disposal site, or at
32 locations convenient to the residents of the county. The drop-off
33 boxes and buy-back centers may be owned or operated by public,
34 nonprofit, or private persons. Beginning January 1, 2026, a
35 jurisdiction may incorporate by reference the plans of producer
36 responsibility organizations established in the jurisdiction under
37 chapter 70A. - - - RCW (the new chapter created in section 36 of this
38 act) to fulfill this requirement;

1 (ii) Programs to monitor the collection of source separated waste
2 at nonresidential sites where there is sufficient density to sustain
3 a program;

4 (iii) Programs to collect yard waste and food waste, if the
5 county or city submitting the plan finds that there are adequate
6 markets or capacity for composted yard waste and food waste within or
7 near the service area to consume the majority of the material
8 collected; and

9 (iv) Programs to educate and promote the concepts of waste
10 reduction and recycling;

11 (c) Recycling strategies, including a description of markets for
12 recyclables, a review of waste generation trends, a description of
13 waste composition, a discussion and description of existing programs
14 and any additional programs needed to assist public and private
15 sector recycling, and an implementation schedule for the designation
16 of specific materials to be collected for recycling, and for the
17 provision of recycling collection services;

18 (d) Other information the county or city submitting the plan
19 determines is necessary.

20 (8) An assessment of the plan's impact on the costs of solid
21 waste collection. The assessment shall be prepared in conformance
22 with guidelines established by the utilities and transportation
23 commission. The commission shall cooperate with the Washington state
24 association of counties and the association of Washington cities in
25 establishing such guidelines.

26 (9) A review of potential areas that meet the criteria as
27 outlined in RCW 70A.205.110.

28 (10) A contamination reduction and outreach plan. The
29 contamination reduction and outreach plan must address reducing
30 contamination in recycling. Except for counties with a population of
31 twenty-five thousand or fewer, by July 1, 2021, a contamination
32 reduction and outreach plan must be included in each solid waste
33 management plan by a plan amendment or included when revising or
34 updating a solid waste management plan developed under this chapter.
35 Jurisdictions may adopt the state's contamination reduction and
36 outreach plan as developed under RCW 70A.205.070 in lieu of creating
37 their own plan. Beginning January 1, 2026, a jurisdiction must
38 incorporate by reference the plans of producer responsibility
39 organizations established in the jurisdiction under chapter 70A. - -
40 - RCW (the new chapter created in section 36 of this act) in lieu of

1 creating their own plan. A recycling contamination reduction and
2 outreach plan must include the following:

3 (a) A list of actions for reducing contamination in recycling
4 programs for single-family and multiple-family residences, commercial
5 locations, and drop boxes depending on the jurisdictions system
6 components;

7 (b) A list of key contaminants identified by the jurisdiction or
8 identified by the department;

9 (c) A discussion of problem contaminants and the contaminants'
10 impact on the collection system;

11 (d) An analysis of the costs and other impacts associated with
12 contaminants to the recycling system; and

13 (e) An implementation schedule and details of how outreach is to
14 be conducted. Contamination reduction education methods may include
15 sharing community-wide messaging through newsletters, articles,
16 mailers, social media, websites, or community events, informing
17 recycling drop box customers about contamination, and improving
18 signage.

19 **Sec. 29.** RCW 70A.205.070 and 2020 c 20 s 1166 are each amended
20 to read as follows:

21 (1) The department or the commission, as appropriate, shall
22 provide to counties and cities technical assistance including, but
23 not limited to, planning guidelines, in the preparation, review, and
24 revision of solid waste management plans required by this chapter.
25 Guidelines prepared under this section shall be consistent with the
26 provisions of this chapter. Guidelines for the preparation of the
27 waste reduction and recycling element of the comprehensive solid
28 waste management plan shall be completed by the department by March
29 15, 1990. These guidelines shall provide recommendations to local
30 government on materials to be considered for designation as
31 recyclable materials. The state solid waste management plan prepared
32 pursuant to RCW 70A.205.210 shall be consistent with these
33 guidelines.

34 (2) The department shall be responsible for development and
35 implementation of a comprehensive statewide public information
36 program designed to encourage waste reduction, source separation, and
37 recycling by the public. The department shall operate a toll free
38 hotline to provide the public information on waste reduction and
39 recycling.

1 (3) The department shall provide technical assistance to local
2 governments in the development and dissemination of informational
3 materials and related activities to assure recognition of unique
4 local waste reduction and recycling programs.

5 (4) (a) The department must create and implement a statewide
6 recycling contamination reduction and outreach plan based on best
7 management practices for recycling, developed with stakeholder input
8 by July 1, 2020. Jurisdictions may use the statewide plan in lieu of
9 developing their own plan. Beginning January 1, 2026, a jurisdiction
10 must incorporate by reference the plans of producer responsibility
11 organizations established in the jurisdiction under chapter 70A. - -
12 - RCW (the new chapter created in section 36 of this act) in lieu of
13 creating their own plan.

14 (b) The department must provide technical assistance and create
15 guidance to help local jurisdictions determine the extent of
16 contamination in their regional recycling and to develop
17 contamination reduction and outreach plans. Contamination means any
18 material not included on the local jurisdiction's acceptance list.

19 (c) Contamination reduction education methods may include sharing
20 community-wide messaging through newsletters, articles, mailers,
21 social media, websites, or community events, informing recycling drop
22 box customers about contamination, and improving signage.

23 (d) The department must cite the sources of information that it
24 relied upon, including any peer-reviewed science, in the development
25 of the best management practices for recycling under (a) of this
26 subsection and the guidance developed under (b) of this subsection.

27 (5) Local governments shall make all materials and information
28 developed with the assistance grants provided under RCW 70A.205.080
29 available to the department for potential use in other areas of the
30 state.

31 **Sec. 30.** RCW 81.77.030 and 2020 c 20 s 1467 are each amended to
32 read as follows:

33 (1) The commission shall supervise and regulate every solid waste
34 collection company in this state(~~(1~~
35 ~~(1))~~);

36 (a) By fixing and altering its rates, charges, classifications,
37 rules and regulations;

38 ~~((2))~~ (b) By regulating the accounts, service, and safety of
39 operations;

1 ~~((3))~~ (c) By requiring the filing of annual and other reports
2 and data;

3 ~~((4))~~ (d) By supervising and regulating such persons or
4 companies in all other matters affecting the relationship between
5 them and the public which they serve;

6 ~~((5))~~ (e) By requiring compliance with local solid waste
7 management plans and related implementation ordinances;

8 ~~((6))~~ (f) By reviewing producer reimbursement of regulated
9 service providers and reviewing the financial information of private
10 recycling businesses, consistent with section 13 of this act;

11 (g) By requiring certificate holders under this chapter (~~81.77~~
12 RCW)) to use rate structures and billing systems consistent with the
13 solid waste management priorities set forth under RCW 70A.205.005 and
14 the minimum levels of solid waste collection and recycling services
15 pursuant to local comprehensive solid waste management plans and with
16 implementation of services designated by a producer responsibility
17 organization in an approved plan to meet the requirements of chapter
18 70A. - - - RCW (the new chapter created in section 36 of this act).
19 The commission may order consolidated billing and provide for
20 reasonable and necessary expenses to be paid to the administering
21 company if more than one certificate is granted in an area.

22 (2) The commission, on complaint made on its own motion or by an
23 aggrieved party, at any time, after providing the holder of any
24 certificate with notice and an opportunity for a hearing at which it
25 shall be proven that the holder has willfully violated or refused to
26 observe any of the commission's orders, rules, or regulations, or has
27 failed to operate as a solid waste collection company for a period of
28 at least one year preceding the filing of the complaint, may suspend,
29 revoke, alter, or amend any certificate issued under the provisions
30 of this chapter.

31 **Sec. 31.** RCW 81.77.160 and 1997 c 434 s 1 are each amended to
32 read as follows:

33 (1) The commission, in fixing and altering collection rates
34 charged by every solid waste collection company under this section,
35 shall include in the base for the collection rates:

36 (a) All charges for the disposal of solid waste at the facility
37 or facilities designated by a local jurisdiction under a local
38 comprehensive solid waste management plan or ordinance; and

1 (b) All known and measurable costs related to implementation of
2 the approved county or city comprehensive solid waste management plan
3 or to implementation of services designated by a producer
4 responsibility organization in an approved plan to meet the
5 requirements of chapter 70A. - - - RCW (the new chapter created in
6 section 36 of this act).

7 (2) If a solid waste collection company files a tariff to recover
8 the costs specified under this section, and the commission suspends
9 the tariff, the portion of the tariff covering costs specified in
10 this section shall be placed in effect by the commission at the
11 request of the company on an interim basis as of the originally filed
12 effective date, subject to refund, pending the commission's final
13 order. The commission may adopt rules to implement this section.

14 (3) This section applies to a solid waste collection company that
15 has an affiliated interest under chapter 81.16 RCW with a facility,
16 if the total cost of disposal, including waste transfer, transport,
17 and disposal charges, at the facility is equal to or lower than any
18 other reasonable and currently available option.

19 **Sec. 32.** RCW 81.77.185 and 2010 c 154 s 3 are each amended to
20 read as follows:

21 (1) The commission shall allow solid waste collection companies
22 collecting recyclable materials other than covered products collected
23 under an approved plan in chapter 70A. - - - RCW (the new chapter
24 created in section 36 of this act) to retain up to fifty percent of
25 the revenue paid to the companies for the material if the companies
26 submit a plan to the commission that is certified by the appropriate
27 local government authority as being consistent with the local
28 government solid waste plan and that demonstrates how the revenues
29 will be used to increase recycling. The remaining revenue shall be
30 passed to residential customers.

31 (2) By December 2, 2005, the commission shall provide a report to
32 the legislature that evaluates:

33 (a) The effectiveness of revenue sharing as an incentive to
34 increase recycling in the state; and

35 (b) The effect of revenue sharing on costs to customers.

36 **Sec. 33.** RCW 81.80.470 and 2007 c 234 s 91 are each amended to
37 read as follows:

1 (1) The collection or transportation of recyclable materials that
2 are not covered products under chapter 70A. - - - RCW (the new
3 chapter created in section 36 of this act) from a drop box or
4 recycling buy-back center, or collection or transportation of
5 recyclable materials by or on behalf of a commercial or industrial
6 generator of recyclable materials to a recycler for use or
7 reclamation is subject to regulation under this chapter.

8 (2) Nothing in this chapter changes RCW 81.77.010(8), to allow
9 any entity, other than a solid waste collection company authorized by
10 the commission or an entity collecting solid waste from a city or
11 town under chapter 35.21 or 35A.21 RCW, to collect solid waste that
12 may incidentally contain recyclable materials.

13 NEW SECTION. Sec. 34. PREEMPTION STATEMENT. Nothing in this
14 chapter preempts or limits the authority of any county, city, or
15 other subdivision of this state to enact, adopt, implement, or
16 enforce requirements related to paper or plastic packaging that are
17 at least as stringent and expansive as the requirements established
18 in this chapter.

19 NEW SECTION. Sec. 35. SEVERABILITY CLAUSE. If any provision of
20 this act or its application to any person or circumstance is held
21 invalid, the remainder of the act or the application of the provision
22 to other persons or circumstances is not affected.

23 NEW SECTION. Sec. 36. CODIFICATION DIRECTIVE. Sections 1
24 through 22, 34, and 35 of this act constitute a new chapter in Title
25 70A RCW.

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