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**SENATE BILL 5219**

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**State of Washington 67th Legislature 2021 Regular Session**

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

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

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

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

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

(3) Plastic packaging can be recycled and can contain recycled content in order to close the loop in the recycling stream. Many companies have already taken the initiative at closing the loop by using plastic bottles that contain 100 percent recycled content. Since November 2010, one national juice company has been using bottles made with 100 percent postconsumer recycled content for all of its juices and juice smoothies. In January 2018, an international beverage producer announced that it will make all its bottles from 100 percent recycled plastic by 2025.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Recycling rates;

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

(iv) The capacity of recycling or processing infrastructure;

(v) The progress made by plastics packaging manufacturers in meeting the requirements of this section; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A plastic packaging producer must:

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

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

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

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

NEW SECTION. **Sec.**  (1) The recycling improvement account is created in the state treasury. All receipts from the fee imposed on plastic packaging under section 5 of this act must be deposited in the account, except that until June 30, 2024, $1,000,000 must be deposited in the waste reduction, recycling, and litter control account created in RCW 70A.200.140, with the remainder deposited in the recycling improvement account. Moneys in the account may be spent only after appropriation.

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

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

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

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

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

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

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

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

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

(iii) The department shall develop rules governing the distribution of funds under this section in conjunction with an advisory committee convened by the department that includes five members appointed by the Washington association of county solid waste managers and five members appointed by the Washington state association of local public health officials.

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

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

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

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

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

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

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

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

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

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

(a) The department;

(b) The department of commerce;

(c) The utilities and transportation commission;

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

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

(f) Public sector recycling and solid waste industries;

(g) Private sector recycling and solid waste industries;

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

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

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

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

(l) Recycled plastic feedstock users; and

(m) Environmental organizations.

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

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

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

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

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

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

(1) There is hereby created an account within the state treasury to be known as the waste reduction, recycling, and litter control account. Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

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

(b)(i) Twenty percent to the department for local government funding programs for waste reduction, litter control, recycling activities, and composting activities by cities and counties under RCW 70A.200.190, to be administered by the department of ecology; (ii) any unspent funds under (b)(i) of this subsection may be used to create and pay for a matching fund competitive grant program to be used by local governments for the development and implementation of contamination reduction and outreach plans for inclusion in comprehensive solid waste management plans or by local governments and nonprofit organizations for local or statewide education programs designed to help the public with litter control, waste reduction, recycling, and composting of primarily the products taxed under chapter 82.19 RCW. Recipients under this subsection include programs to reduce wasted food and food waste that are designed to achieve the goals established in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3). Grants must adhere to the following requirements: (A) No grant may exceed sixty thousand dollars; (B) grant recipients shall match the grant funding allocated by the department by an amount equal to twenty-five percent of eligible expenses. A local government's share of these costs may be met by cash or contributed services; (C) the obligation of the department to make grant payments is contingent upon the availability of the amount of money appropriated for this subsection (1)(b); and (D) grants are managed under the guidelines for existing grant programs; ((~~and~~))

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

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

(ii) Thirty-six percent to the department of ecology to: ((~~(i)~~)) (A) Implement activities under RCW 70A.200.150 for waste reduction, recycling, and composting efforts; ((~~(ii)~~)) (B) provide technical assistance to local governments and commercial businesses to increase recycling markets and recycling and composting programs primarily for the products taxed under chapter 82.19 RCW designed to educate citizens about waste reduction, litter control, and recyclable and compostable products and programs; ((~~(iii)~~)) (C) increase access to waste reduction, composting, and recycling programs, particularly for food packaging and plastic bags and appropriate composting techniques; and ((~~(iv)~~)) (D) for programs to reduce wasted food and food waste that are designed to achieve the goals established in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3); and

(d) After June 30, 2022, 40 percent to the department of ecology: (i) To implement activities under RCW 70A.200.150 for waste reduction, recycling, and composting efforts; (ii) to provide technical assistance to local governments and commercial businesses to increase recycling markets and recycling and composting programs primarily for the products taxed under chapter 82.19 RCW designed to educate citizens about waste reduction, litter control, and recyclable and compostable products and programs; (iii) to increase access to waste reduction, composting, and recycling programs, particularly for food packaging and plastic bags and appropriate composting techniques; and (iv) for programs to reduce wasted food and food waste that are designed to achieve the goals established in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3).

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

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

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

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

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

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

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**