

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5143

Chapter 297, Laws of 1991

52nd Legislature
1991 Regular Session

RECYCLED PRODUCTS--STATE AND LOCAL GOVERNMENT PROCUREMENT
REQUIREMENTS

EFFECTIVE DATE: 7/28/91

Passed by the Senate April 22, 1991
Yeas 45 Nays 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 18, 1991
Yeas 98 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Approved May 20, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5143** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

FILED

May 20, 1991 - 11:16 a.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5143

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Metcalf, Murray and Conner).

Read first time March 11, 1991.

1 AN ACT Relating to recycling; amending RCW 43.19.538; adding a new
2 section to chapter 43.78 RCW; adding a new section to chapter 47.28
3 RCW; adding a new section to chapter 19.27 RCW; adding a new section to
4 Title 28A RCW; adding a new chapter to Title 43 RCW; creating new
5 sections; and repealing RCW 43.19.537.

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

7 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. It is the purpose of
8 this chapter to:

9 (1) Substantially increase the procurement of recycled content
10 products by all local and state governmental agencies and public
11 schools, and provide a model to encourage a comparable commitment by
12 Washington state citizens and businesses in their purchasing practices;

13 (2) Target government procurement policies and goals toward those
14 recycled products for which there are significant market development

1 needs or that may substantially contribute to solutions to the state's
2 waste management problem;

3 (3) Provide standards for recycled products for use in procurement
4 programs by all governmental agencies;

5 (4) Provide the authority for all governmental agencies to adopt
6 preferential purchasing policies for recycled products;

7 (5) Direct state agencies to develop strategies to increase
8 recycled product purchases, and to provide specific goals for
9 procurement of recycled paper products and organic recovered materials;
10 and

11 (6) Provide guidance and direction for local governments and other
12 public agencies to develop plans for increasing the procurement of
13 recycled content products.

14 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
15 requires otherwise, the definitions in this section apply throughout
16 this chapter.

17 (1) "Compost products" means mulch, soil amendments, ground cover,
18 or other landscaping material derived from the biological or mechanical
19 conversion of cellulose-containing waste materials.

20 (2) "Department" means the department of general administration.

21 (3) "Director" means the director of the department of general
22 administration.

23 (4) "Local government" means a city, town, county, special purpose
24 district, school district, or other municipal corporation.

25 (5) "Lubricating oil" means petroleum-based oils for reducing
26 friction in engine parts and other mechanical parts.

27 (6) "Mixed waste paper" means assorted low-value grades of paper
28 that have not been separated into individual grades of paper at the
29 point of collection.

1 (7) "Paper and paper products" means all items manufactured from
2 paper or paperboard.

3 (8) "Postconsumer waste" means a material or product that has
4 served its intended use and has been discarded for disposal or recovery
5 by a final consumer.

6 (9) "Procurement officer" means the person that has the primary
7 responsibility for procurement of materials or products.

8 (10) "State agency" means all units of state government, including
9 divisions of the governor's office, the legislature, the judiciary,
10 state agencies and departments, correctional institutions, vocational
11 technical institutions, and universities and colleges.

12 (11) "Recycled content product" or "recycled product" means a
13 product containing recycled materials.

14 (12) "Recycled materials" means waste materials and by-products
15 that have been recovered or diverted from solid waste and that can be
16 utilized in place of a raw or virgin material in manufacturing a
17 product and consists of materials derived from postconsumer waste,
18 manufacturing waste, industrial scrap, agricultural wastes, and other
19 items, all of which can be used in the manufacture of new or recycled
20 products.

21 (13) "Re-refined oils" means used lubricating oils from which the
22 physical and chemical contaminants acquired through previous use have
23 been removed through a refining process. Re-refining may include
24 distillation, hydrotreating, or treatments employing acid, caustic,
25 solvent, clay, or other chemicals, or other physical treatments other
26 than those used in reclaiming.

27 (14) "USEPA product standards" means the product standards of the
28 United States environmental protection agency for recycled content
29 published in the code of federal regulations.

1 NEW SECTION. **Sec. 3.** STANDARDS FOR RECYCLED CONTENT. (1) The

2 director shall adopt standards specifying the minimum content of
3 recycled materials in products or product categories. The standards
4 shall:

5 (a) Be consistent with the USEPA product standards, unless the
6 director finds that a different standard would significantly increase
7 recycled product availability or competition;

8 (b) Consider the standards of other states, to encourage
9 consistency of manufacturing standards;

10 (c) Consider regional product manufacturing capability;

11 (d) Address specific products or classes of products; and

12 (e) Consider postconsumer waste content and the recyclability of
13 the product.

14 (2) The director shall consult with the supply management board and
15 department of ecology prior to adopting the recycled content standards.

16 (3) The director shall adopt recycled content standards for at
17 least the following products by the dates indicated:

18 (a) By July 1, 1992:

19 (i) Paper and paper products;

20 (ii) Organic recovered materials; and

21 (iii) Latex paint products;

22 (b) By July 1, 1993:

23 (i) Products for lower value uses containing recycled plastics;

24 (ii) Retread and remanufactured tires;

25 (iii) Lubricating oils;

26 (iv) Automotive batteries; and

27 (v) Building insulation.

28 (4) The standards required by this section shall be applied to
29 recycled product purchasing by the department and other state agencies.

30 The standards may be adopted or applied by any other local government

1 in product procurement. The standards shall provide for exceptions
2 under appropriate circumstances to allow purchases of recycled products
3 that do not meet the minimum content requirements of the standards.

4 NEW SECTION. **Sec. 4.** LOCAL GOVERNMENT PROCUREMENT PROGRAMS. (1)
5 By January 1, 1993, each local government shall review its existing
6 procurement policies and specifications to determine whether recycled
7 products are intentionally or unintentionally excluded. The policies
8 and specifications shall be revised to include such products unless a
9 recycled content product does not meet an established performance
10 standard of the agency.

11 (2) By fiscal year 1994, each local government shall adopt a
12 minimum purchasing goal for recycled content as a percentage of the
13 total dollar value of supplies purchased. To assist in achieving this
14 goal each local government shall adopt a strategy by January 1, 1993,
15 and shall submit a description of the strategy to the department. The
16 department shall report to the appropriate standing committees of the
17 legislature by October 1, 1993, on the progress of implementation by
18 local governments, and shall thereafter periodically report on the
19 progress of recycled product purchasing by state and other public
20 agencies. All public agencies shall respond to requests for
21 information from the department for the purpose of its reporting
22 requirements under this section.

23 (3) Each local government shall designate a procurement officer who
24 shall serve as the primary contact with the department for compliance
25 with the requirements of this chapter.

26 (4) This section shall apply only to local governments with
27 expenditures for supplies exceeding five hundred thousand dollars for
28 fiscal year 1989. Expenditures for capital goods and for electricity,
29 water, or gas for resale shall not be considered a supply expenditure.

1 **Sec. 5.** RCW 43.19.538 and 1988 c 175 s 2 are each amended to read
2 as follows:

3 (1) The director of general administration, through the state
4 purchasing director, shall develop specifications and adopt rules for
5 the purchase of products which will provide for preferential purchase
6 of products containing ~~((recovered))~~ recycled material by:

7 (a) The use of a weighting factor determined by the amount of
8 ~~((recovered))~~ recycled material in a product, where appropriate and
9 known in advance to potential bidders, to determine the lowest
10 responsible bidder. The actual dollars bid shall be the contracted
11 amount. If the department determines, according to criteria
12 established by rule that the use of this weighting factor does not
13 encourage the use of more ~~((recovered))~~ recycled material, the
14 department shall consider and award bids without regard to the
15 weighting factor. In making this determination, the department shall
16 consider but not be limited to such factors as adequate competition,
17 economics or environmental constraints, quality, and availability.

18 (b) Requiring a written statement of the percentage range of
19 ~~((recovered material))~~ recycled content from the bidder providing
20 products containing ~~((recovered material))~~ recycled. The range may be
21 stated in ~~((fifteen))~~ five percent increments.

22 (2) The director shall develop a directory of businesses that
23 supply products containing significant quantities of ~~((recovered))~~
24 recycled materials. This directory may be combined with and made
25 accessible through the data base of recycled content products to be
26 developed under section 8 of this act.

27 (3) The director shall encourage all parties using the state
28 purchasing office to purchase products containing ~~((recovered))~~
29 recycled materials.

1 (4) The rules, specifications, and bid evaluation shall be
2 consistent with recycled content standards adopted under section 3 of
3 this act.

4 NEW SECTION. Sec. 6. (1) Each local government shall consider the
5 adoption of policies, rules, or ordinances to provide for the
6 preferential purchase of recycled content products. Any local
7 government may adopt the preferential purchasing policy of the
8 department of general administration, or portions of such policy, or
9 another policy that provides a preference for recycled content
10 products.

11 (2) The department of general administration shall prepare one or
12 more model recycled content preferential purchase policies suitable for
13 adoption by local governments. The model policy shall be widely
14 distributed and provided through the technical assistance and workshops
15 under section 9 of this act.

16 (3) A local government that is not subject to the purchasing
17 authority of the department of general administration, and that adopts
18 the preferential purchase policy or rules of the department, shall not
19 be limited by the percentage price preference included in such policy
20 or rules.

21 NEW SECTION. Sec. 7. STATE AGENCY PROCUREMENT. The department
22 shall prepare a mandatory state plan to increase purchases of recycled-
23 content products by the department and all state agencies, including
24 higher education institutions. The plan shall include purchases from
25 public works contracts. The plan shall address the purchase of plastic
26 products, retread and remanufactured tires, motor vehicle lubricants,
27 latex paint, and lead acid batteries having recycled content. In

1 addition, the plan shall incorporate actions to achieve the following
2 purchase level goals of recycled content paper and compost products:

3 (1) Paper products as a percentage of the total dollar amount
4 purchased on an annual basis:

5 (a) At least forty percent by 1993;

6 (b) At least fifty percent by 1994;

7 (c) At least sixty percent by 1995.

8 (2) Compost products as a percentage of the total dollar amount on
9 an annual basis:

10 (a) At least twenty-five percent by 1993;

11 (b) At least forty percent by 1995;

12 (c) At least sixty percent by 1997.

13 NEW SECTION. **Sec. 8.** DATA BASE. (1) The department shall develop
14 a data base of available products with recycled-content products, and
15 vendors supplying such products. The data base shall incorporate
16 information regarding product consistency with the content standards
17 adopted under section 3 of this act. The data base shall incorporate
18 information developed through state and local government procurement of
19 recycled-content products.

20 (2) By December 1, 1992, the department shall report to the
21 appropriate standing committees of the legislature on the cost of
22 making the data base accessible to all state and local governments and
23 to the private sector.

24 (3) The department shall compile information on purchases made by
25 the department or pursuant to the department's purchasing authority,
26 and information provided by local governments, regarding:

27 (a) The percentage of recycled content and, if known, the amount of
28 postconsumer waste in the products purchased;

29 (b) Price;

1 (c) Agency experience with the performance of recycled products and
2 the supplier under the terms of the purchase; and

3 (d) Any other information deemed appropriate by the department.

4 NEW SECTION. **Sec. 9.** PROCUREMENT EDUCATION PROGRAM. (1) The
5 department shall implement an education program to encourage maximum
6 procurement of recycled products by state and local government
7 entities. The program shall include at least the following:

8 (a) Technical assistance to all state and local governments and
9 their designated procurement officers on the requirements of this
10 chapter, including preparation of model purchase contracts, the
11 preparation of procurement plans, and the availability of recycled
12 products;

13 (b) Two or more workshops annually in which all state and local
14 government entities are invited;

15 (c) Information on intergovernmental agreements to facilitate
16 procurement of recycled products.

17 (2) The director shall, in consultation with the department of
18 ecology, make available to the public, local jurisdictions, and the
19 private sector, a comprehensive list of substitutes for extremely
20 hazardous, hazardous, toxic, and nonrecyclable products, and disposable
21 products intended for a single use. The department and all state
22 agencies exercising the purchasing authorities of the department shall
23 include the substitute products on bid notifications, except where the
24 department allows an exception based upon product availability, price,
25 suitability for intended use, or similar reasons.

26 (3) The department shall prepare model procurement guidelines for
27 use by local governments.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.78 RCW
2 to read as follows:

3 PUBLIC PRINTER. The public printer shall take all actions
4 consistent with the plan under section 7 of this act to ensure that
5 seventy-five percent or more of the total dollar amount of printing
6 paper stock used by the printer is recycled content paper by January 1,
7 1995.

8 NEW SECTION. **Sec. 11.** BID NOTIFICATION. A notification regarding
9 a state or local government's intent to procure products with recycled
10 content must be prominently displayed in the procurement solicitation
11 or invitation to bid including:

12 (1) A description of the postconsumer waste content or recycled
13 content requirements; and

14 (2) A description of the agency's recycled content preference
15 program.

16 NEW SECTION. **Sec. 12.** VENDOR CERTIFICATION. (1) After July 1,
17 1992, vendors shall certify the percentage of recycled content in
18 products sold to state and local governments, including the percentage
19 of postconsumer waste that is in the product. The certification shall
20 be in the form of a label on the product or a statement by the vendor
21 attached to the bid documents.

22 (2) The certification on multicomponent or multimaterial products
23 shall verify the percentage and type of postconsumer waste and recycled
24 content by volume contained in the major constituents of the product.

25 (3) The procuring agency may state in bid solicitations that
26 permission to verify the certification by review of the bidder or
27 manufacturer's records must be granted as a condition of the bid award,

1 in the event of a bidder's protest or other challenge to the bid
2 accepted.

3 (4) The department shall adopt rules by May 1, 1992, describing the
4 contents of the certification required by this section.

5 NEW SECTION. **Sec. 13.** PROCUREMENT OF COMPOST PRODUCTS. (1) The
6 department shall increase the procurement of compost products for all
7 state facilities and grounds that require landscaping or similar work.
8 The department shall survey available vendors and state facilities for
9 which such products are suitable, and attempt to match such supplies
10 and need to lower transportation and other costs. The department shall
11 consider and implement modification of performance standards where
12 appropriate to achieve greater procurement of compost products.

13 (2) Beginning July 1, 1992, the total of department contracts
14 awarded in whole or in part for the purchase of landscaping materials
15 or soil amendments shall include compost products as follows:

16 (a) For the period July 1, 1992, through June 30, 1994, twenty-five
17 percent of the total dollar amount of purchases; and

18 (b) On and after July 1, 1994, fifty percent of the total annual
19 dollar amount of purchases.

20 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.28 RCW
21 to read as follows:

22 COMPOST PRODUCTS IN TRANSPORTATION PROJECTS. (1) A contract
23 awarded in whole or in part for the purchase of compost products as a
24 soil cover or soil amendment to state highway rights of way shall
25 specify that compost products be purchased in accordance with the
26 following schedule:

27 (a) For the period July 1, 1991, through June 30, 1993, twenty-five
28 percent of the total dollar amount purchased;

1 (b) For the period July 1, 1993, through June 30, 1995, fifty
2 percent of the total dollar amount purchased. The percentages in this
3 subsection apply only to the materials' value, and do not include
4 services or other materials.

5 (2) In order to carry out the provisions of this section, the
6 department of transportation shall develop and adopt bid specifications
7 for compost products used in state highway construction projects.

8 NEW SECTION. **Sec. 15.** A new section is added to chapter 19.27 RCW
9 to read as follows:

10 STATE BUILDING CODE STUDY. The state building code council, in
11 consultation with the department of ecology and local governments,
12 shall conduct a study of the state building code, and adopt changes as
13 necessary to encourage greater use of recycled building materials from
14 construction and building demolition debris, mixed waste paper, waste
15 paint, waste plastics, and other waste materials.

16 NEW SECTION. **Sec. 16.** USE OF RECYCLED MATERIALS IN ROAD
17 CONSTRUCTION. The department of transportation, in consultation with
18 the department of trade and economic development, shall prepare and
19 forward to the legislature on or before January 1, 1992, a study of the
20 use of recycled materials for public highways, roads, bicycle routes,
21 trails, and paths. The study shall include, but not be limited to:

22 (1) An analysis of the types of recycled materials appropriate and
23 feasible as alternative paving material such as glass, tires, or
24 incinerator ash;

25 (2) An analysis of uses for waste tires, including, but not limited
26 to, erosion control mats, highway stabilization mats, ferry bumpers,
27 highway crash attenuation barriers, road subbase materials, or
28 backfill;

1 (3) An analysis of using recycled mixed-plastic materials for guard
2 rail posts, right of way fence posts, and sign supports;

3 (4) Strategies to test and monitor the use of recycled content
4 materials in road construction;

5 (5) Product specifications for recycled materials;

6 (6) Programs to demonstrate the feasibility of using recycled
7 materials; and

8 (7) Identification of recycled material sources and vendors to
9 ensure competitive product pricing and material availability.

10 NEW SECTION. **Sec. 17.** USE OF COMPOST PRODUCTS IN LOCAL ROAD
11 PROJECTS. (1) Each county and city required to prepare a strategy
12 under section 4 of this act shall adopt specifications for compost
13 products to be used in road projects. The specifications developed by
14 the department of transportation under section 14 of this act may be
15 adopted by the city or county in lieu of developing specifications.

16 (2) After July 1, 1992, any contract awarded in whole or in part
17 for applying soils, soil covers, or soil amendments to road rights of
18 way shall specify that compost materials be purchased in accordance
19 with the following schedule:

20 (a) For the period July 1, 1992, through June 30, 1994, at least
21 twenty-five percent of the total dollar amount of purchases by the city
22 or county;

23 (b) On and after July 1, 1994, at least fifty percent of the annual
24 total dollar amount of purchases by the city or county.

25 (3) The city or county may depart from the schedule in subsection
26 (2) of this section where it determines that no suitable product is
27 available at a reasonable price.

1 NEW SECTION. **Sec. 18.** A new section is added to Title 28A RCW to
2 read as follows:

3 Every school board of directors shall consider the purchase of
4 playground matting manufactured from shredded waste tires in
5 undertaking construction or maintenance of playgrounds. The department
6 of general administration shall upon request assist in the development
7 of product specifications and vendor identification.

8 NEW SECTION. **Sec. 19.** RCW 43.19.537 and 1988 c 175 s 1 & 1982 c
9 61 s 1 are each repealed.

10 NEW SECTION. **Sec. 20.** CODIFICATION. Sections 1 through 4, 6
11 through 9, 11 through 13, 16, and 17 of this act shall constitute a new
12 chapter in Title 43 RCW.

13 NEW SECTION. **Sec. 21.** CAPTIONS NOT LAW. Captions as used in this
14 act constitute no part of the law.

15 NEW SECTION. **Sec. 22.** If specific funding for the purposes of
16 this act, referencing this act by bill number, is not provided by June
17 30, 1991, in the omnibus appropriations act, this act shall be null and
18 void.

Passed the Senate April 22, 1991.
Passed the House April 18, 1991.
Approved by the Governor May 20, 1991.
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