

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5788

Chapter 394, Laws of 2005

59th Legislature
2005 Regular Session

RECYCLABLE MATERIALS--TRANSPORTERS

EFFECTIVE DATE: 7/24/05

Passed by the Senate April 19, 2005
YEAS 40 NAYS 6

BRAD OWEN

President of the Senate

Passed by the House April 13, 2005
YEAS 95 NAYS 1

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5788** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved May 11, 2005.

FILED

May 11, 2005 - 1:50 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5788

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Doumit, Kastama, Mulliken, Haugen, Morton, Poulsen, Pridemore and Berkey)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to ensuring the lawful transport and handling of
2 recyclable materials; amending RCW 70.95.305; reenacting and amending
3 RCW 70.95.020; adding new sections to chapter 70.95 RCW; creating a new
4 section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 improve recycling, eliminate illegal disposal of recyclable materials,
8 protect consumers from sham recycling, and to further the purposes of
9 RCW 70.95.020 and the goal of consistency in jurisdictional treatment
10 of the statewide solid waste management plan adopted by the department
11 of ecology.

12 **Sec. 2.** RCW 70.95.020 and 1998 c 156 s 1 and 1998 c 90 s 1 are
13 each reenacted and amended to read as follows:

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

1 (1) To assign primary responsibility for adequate solid waste
2 handling to local government, reserving to the state, however, those
3 functions necessary to assure effective programs throughout the state;

4 (2) To provide for adequate planning for solid waste handling by
5 local government;

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

10 (4) To encourage the development and operation of waste recycling
11 facilities needed to accomplish the management priority of waste
12 recycling, (~~and~~) to promote consistency in the requirements for such
13 facilities throughout the state, and to ensure that recyclable
14 materials diverted from the waste stream for recycling are routed to
15 facilities in which recycling occurs;

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

19 (6) To encourage storage, proper disposal, and recycling of
20 discarded vehicle tires and to stimulate private recycling programs
21 throughout the state; and

22 (7) To encourage the development and operation of waste recycling
23 facilities and activities needed to accomplish the management priority
24 of waste recycling and to promote consistency in the permitting
25 requirements for such facilities and activities throughout the state.

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

30 **Sec. 3.** RCW 70.95.305 and 1998 c 156 s 5 are each amended to read
31 as follows:

32 (1) Notwithstanding any other provision of this chapter, the
33 department may by rule exempt from the requirements to obtain a solid
34 waste handling permit any category of solid waste handling facility
35 that it determines to:

36 (a) Present little or no environmental risk; and

1 (b) Meet the environmental protection and performance requirements
2 required for other similar solid waste facilities.

3 (2) This section does not apply to any facility or category of
4 facilities that:

5 (a) Receives municipal solid waste destined for final disposal,
6 including but not limited to transfer stations, landfills, and
7 incinerators;

8 (b) Applies putrescible solid waste on land for final disposal
9 purposes;

10 (c) Handles mixed solid wastes that have not been processed to
11 segregate solid waste materials destined for disposal from other solid
12 waste materials destined for a beneficial use or recycling;

13 (d) Receives or processes organic waste materials into compost in
14 volumes that generally far exceed those handled by municipal park
15 departments, master gardening programs, and households; or

16 (e) Receives solid waste destined for recycling or reuse, the
17 operation of which is determined by the department to present risks to
18 human health and the environment.

19 (3) Rules adopted under this section shall contain such terms and
20 conditions as the department deems necessary to ensure compliance with
21 applicable statutes and rules. If a facility does not operate in
22 compliance with the terms and conditions established for an exemption
23 under subsection (1) of this section, the facility is subject to the
24 permitting requirements for solid waste handling under this chapter.

25 (4) This section shall not be deemed to invalidate the exemptions
26 or determinations of nonapplicability in the department's solid waste
27 rules as they exist on June 11, 1998, which exemptions and
28 determinations are recognized and confirmed subject to the department's
29 continuing authority to modify or revoke those exemptions or
30 determinations by rule.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.95 RCW
32 to read as follows:

33 (1) For the purposes of this section and section 5 of this act,
34 "transporter" means any person or entity that transports recyclable
35 materials from commercial or industrial generators over the public
36 highways of the state of Washington for compensation, and who are
37 required to possess a permit to operate from the Washington utilities

1 and transportation commission under chapter 81.80 RCW. "Transporter"
2 includes commercial recycling operations of certificated solid waste
3 collection companies as provided in chapter 81.77 RCW. "Transporter"
4 does not include:

5 (a) Carriers of commercial recyclable materials, when such
6 materials are owned or being bought or sold by the entity or person,
7 and being carried in their own vehicle, when such activity is
8 incidental to the conduct of an entity or person's primary business;

9 (b) Entities or persons hauling their own recyclables or hauling
10 recyclables they generated or purchased and transported in their own
11 vehicles;

12 (c) Nonprofit or charitable organizations collecting and
13 transporting recyclable materials from a buyback center, drop box, or
14 from a commercial or industrial generator of recyclable materials;

15 (d) City municipal solid waste departments or city solid waste
16 contractors; or

17 (e) Common carriers under chapter 81.80 RCW whose primary business
18 is not the transportation of recyclable materials.

19 (2) All transporters shall register with the department prior to
20 the transportation of recyclable materials. The department shall
21 supply forms for registration.

22 (3) A transporter who transports recyclable materials within the
23 state without a transporter registration required by this section is
24 subject to a civil penalty in an amount up to one thousand dollars per
25 violation.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.95 RCW
27 to read as follows:

28 (1) A transporter may not deliver any recyclable materials for
29 disposal to a transfer station or landfill.

30 (2) A transporter shall keep records of locations and quantities
31 specifically identified in relation to a generator's name, service
32 date, address, and invoice, documenting where recyclables have been
33 sold, delivered for processing, or otherwise marketed. These records
34 must be retained for two years from the date of collection, and must be
35 made accessible for inspection by the department and the local health
36 department.

1 (3) A transporter who violates the provisions of this section is
2 subject to a civil penalty of up to one thousand dollars per violation.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.95 RCW
4 to read as follows:

5 Any person damaged by a violation of sections 4 through 8 of this
6 act may bring a civil action for such a violation by seeking either
7 injunctive relief or damages, or both, in the superior court of the
8 county in which the violation took place or in Thurston county. The
9 prevailing party in such an action is entitled to reasonable costs and
10 attorneys' fees, including those on appeal.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.95 RCW
12 to read as follows:

13 (1) All facilities that recycle solid waste, except for those
14 facilities with a current solid waste handling permit issued under RCW
15 70.95.170, must notify the department in writing within thirty days
16 prior to operation, or ninety days from the effective date of this
17 section for existing recycling operations, of the intent to conduct
18 recycling in accordance with this section. Notification must be in
19 writing, and include:

20 (a) Contact information for the person conducting the recycling
21 activity;

22 (b) A general description of the recycling activity;

23 (c) A description of the types of solid waste being recycled; and

24 (d) A general explanation of the recycling processes and methods.

25 (2) Each facility that recycles solid waste, except those
26 facilities with a current solid waste handling permit issued under RCW
27 70.95.170, shall prepare and submit an annual report to the department
28 by April 1st on forms supplied by the department. The annual report
29 must detail recycling activities during the previous calendar year and
30 include the following information:

31 (a) The name and address of the recycling operation;

32 (b) The calendar year covered by the report;

33 (c) The annual quantities and types of waste received, recycled,
34 and disposed, in tons, for purposes of determining progress towards
35 achieving the goals of waste reduction, waste recycling, and treatment
36 in accordance with RCW 70.95.010(4); and

1 (d) Any additional information required by written notification of
2 the department that is needed to determine progress towards achieving
3 the goals of waste reduction, waste recycling, and treatment in
4 accordance with RCW 70.95.010(4).

5 (3) Any facility, except for product take-back centers, that
6 recycles solid waste materials within the state without first obtaining
7 a solid waste handling permit under RCW 70.95.170 or completing a
8 notification under this section is subject to a civil penalty of up to
9 one thousand dollars per violation.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.95 RCW
11 to read as follows:

12 (1) The department may adopt rules that establish financial
13 assurance requirements for recycling facilities that do not already
14 have financial assurance requirements under this chapter, or are not
15 already specifically exempted from financial assurance requirements
16 under this chapter. The financial assurance requirements must take
17 into consideration the amounts and types of recyclable materials
18 recycled at the facility, and the potential closure and postclosure
19 costs associated with the recycling facility; which assurance may
20 consist of posting of a surety bond in an amount sufficient to meet
21 these requirements or other financial instrument, but in no case less
22 than ten thousand dollars.

23 (2) A recycling facility is required to meet financial assurance
24 requirements adopted by the department by rule, unless the facility is
25 already required to provide financial assurance under other provisions
26 of this chapter.

27 (3) Facilities that collect, recover, process, or otherwise recycle
28 scrap metal, processed scrap metal, unprocessed home scrap metal, and
29 unprocessed prompt scrap metal are exempt from the requirements of this
30 section.

31 NEW SECTION. **Sec. 9.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

Passed by the Senate April 19, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 11, 2005.

Filed in Office of Secretary of State May 11, 2005.