**5056-S2 AMS MCCO S2332.1 - NOT FOR FLOOR USE**

**2SSB 5056** - S AMD **94**

By Senator McCoy

Beginning on page 5, after line 31, strike all of sections 4 through 7 and insert the following:

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

(1) "Alternatives assessment" means identifying and comparing potential chemical and nonchemical alternatives that can replace the use of chemicals identified:

(a) As high priority;

(b) As of high concern for children; or

(c) By the United States environmental protection agency in section 304(a)(1) of the clean water act (water quality criteria for human health).

(2) "Chemical" means a compound or substance, including metals, with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation, or metabolism.

(3) "Chemical action plan" means a plan that identifies, characterizes, and evaluates uses and releases of a specific chemical or group of chemicals and identifies actions needed to protect human health and the environment.

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

(5) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product or is an importer or domestic distributor of a product sold or offered for sale in or into the state. "Manufacturer" does not include small businesses as defined in RCW 19.85.020.

(6) "Product" means any item sold for residential or commercial use including any component or product packaging. "Product" does not include the following items, but does include their packaging:

(a) Food or beverage;

(b) Tobacco products;

(c) Drug or biological products regulated by the United States food and drug administration;

(d) Products produced under military specifications;

(e) Finished products regulated by the federal aviation administration;

(f) Chemicals used to produce an agricultural commodity as defined in RCW 17.21.020; and

(g) Any previously owned product sold in casual or isolated sales as defined in RCW 82.04.040 or products sold by nonprofit organizations.

(7) "Product component" means a uniquely identifiable material or coating that is included as a part of a finished product.

(8) "Safer alternative" means an alternative that is less hazardous to humans or the environment than the existing chemical or chemical process, including a chemical substitute or a change in materials or design that eliminates the need for a chemical alternative.

(9) "Summary report" means a report prepared by the department summarizing available alternatives assessments and includes a determination regarding the existence of a safer alternative. The summary report also includes a determination of the completeness of the alternatives assessments reviewed and identifies unsuitable alternatives.

(10) "Unsuitable alternative" means an alternative identified through the alternatives assessment process that is not a safer alternative.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2016, the department must select chemicals for the development of a chemical action plan as specified under subsection (3) of this section from the following:

(a) Chemicals identified by the United States environmental protection agency in section 304(a)(1) of the clean water act (water quality criteria for human health), that impact Washington state water bodies as identified under section 303(d) of the clean water act; or

(b) Chemicals identified as a high priority chemical as defined in RCW 70.240.010 as applied to humans, plants, or wildlife and that meet the criteria for:

(i) A high priority chemical of high concern for children as described in RCW 70.240.030(1) (a) through (c); or

(ii) Having been shown through environmental monitoring studies to be present in fish, wildlife, air, water, soil, or sediment.

(2) Beginning January 1, 2016, and every two years thereafter, the department, in consultation with the department of health, must complete and publish a chemical action plan, for at least two chemicals as selected under subsection (1) of this section.

(3) The department must develop chemical action plans for chemicals selected under subsection (1) of this section in order to identify, characterize, and evaluate:

(a) Uses and releases of the chemicals in Washington;

(b) The levels of the chemicals present in people, consumer products, the environment, and Washington water bodies as identified under section 303(d) of the federal clean water act; and

(c) Effects on human health and the environment.

(4) Chemical action plans must include the following types of information, evaluations, and recommendations:

(a) The name of the chemical, its properties, uses, and manufacturers;

(b) An analysis of available information on the production, inadvertent production, uses, and disposal of the chemical;

(c) Information on the potential impacts and risks to human health and the environment associated with the use and release of the chemical;

(d) An evaluation of:

(i) Regulatory and nonregulatory approaches that influence production, presence, uses, releases, and management of the chemical;

(ii) Potential environmental and human hazards and exposures;

(iii) Economic and social impacts and benefits;

(iv) Technical feasibility;

(v) The availability and effectiveness of alternatives that reduce exposure to the chemical;

(vi) Consistency with existing federal and state regulatory requirements and information about restrictions or prohibitions by other states and nations;

(vii) Body burden data, toxicological effects, and rates of disease; and

(e) Recommendations for:

(i) Reducing and phasing out the different uses and releases of the chemical;

(ii) Minimizing exposure to the chemical;

(iii) Managing wastes that contain the chemical; and

(iv) Switching to safer substitutes and encouraging development of safer substitutes.

(5) The department may rely on data and information from other established scientific sources for determining the effect on human health and the environment.

(6) The department must create an external advisory committee for each chemical action plan developed to provide stakeholder input, expertise, and additional information. The advisory committee membership must include, but is not limited to, representatives from: Large and small business sectors, including retailers and manufacturers; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; and public health agencies. The department must consult with the advisory committee on the development of a chemical action plan and may request state agencies and technical experts to participate. All advisory committee meetings must be open to the public.

NEW SECTION. **Sec.**  (1) The department may require information from manufacturers of products that contain a chemical selected under section 5(1) of this act in order to develop chemical action plans under section 5(3) of this act. Amounts and estimates may be extrapolated from national data. Manufacturers shall report the following:

(a) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;

(b) The name of the chemical used or produced and its chemical abstracts service registry number;

(c) A brief description of the product or product component containing the chemical;

(d) A description of the function of the chemical in the product;

(e) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;

(f) An estimate of the number of products containing the chemical that the manufacturer sells in and into Washington each year; and

(g) Any other information the manufacturer deems relevant to the appropriate use of the product.

(2) The department shall specify the required format for submission of the information required under subsection (1) of this section. The format should be generally consistent with the format specified in other states with substantially similar reporting requirements.

(3) Multiple businesses, or a business association, may collaborate and submit a single submission on a chemical found in similar products as required under subsection (1)(b) through (g) of this section. However, the submission must include information for each manufacturer as required under subsection (1)(a) of this section.

(4) Where information submitted by a manufacturer under chapter 70.240 RCW is the same as the information required to be submitted by the manufacturer in subsection (1) of this section, that manufacturer is not required to submit the same information again.

(5) The department may, by order, require a manufacturer subject to the reporting requirement in subsection (1) of this section to provide additional information that is relevant to the development of a chemical action plan under section 5 of this act.

NEW SECTION. **Sec.**  (1) The department is authorized to require manufacturers, by order, to conduct alternatives assessments of chemicals identified for chemical action plans under section 5 of this act to determine safer alternatives, less toxic chemicals, or nonchemical alternatives and to avoid the unintended consequence of using a chemical that presents an equivalent or greater concern. The alternatives assessment must be: Consistent with actions identified in the chemical action plan needed to reduce or eliminate threats to human health and the environment.

(a) An alternatives assessment must:

(i) Identify and compare potential chemical and nonchemical alternatives;

(ii) Include an evaluation of chemical hazard, exposure, performance, cost, and availability; and

(iii) Identify alternatives.

(b) An alternatives assessment must follow the guidelines issued by the interstate chemicals clearinghouse, the national academy of sciences, or an equivalent methodology.

(2) If ordered by the department, a manufacturer of a product that contains a chemical for which a chemical action plan has been completed under section 5 of this act must submit an alternatives assessment to the department for each use of the chemical specified by the department. The manufacturer must submit the alternatives assessment to the department within one year of receipt of the department's order. Upon request, the department may grant an extension not to exceed six months. Multiple businesses, or a business association, may collaborate and submit a single alternatives assessment on a chemical found in similar products.

(3) In lieu of an alternatives assessment, if a manufacturer has ceased using the chemical for which it would be required to do an alternatives assessment, the manufacturer may submit a certificate of compliance as described in section 9 of this act.

(4) The department shall review an alternatives assessment submitted to the department in compliance with an order issued by the department under subsection (2) of this section to determine if the assessment meets the definition and requirements of an alternatives assessment.

(5) If the department determines that an alternatives assessment submitted in response to an order issued under subsection (2) of this section is incomplete, the department may require the manufacturer or association to submit a revised alternatives assessment within an additional three months to correct deficiencies identified by the department.

(6) If the department determines that no revised alternatives assessment meets the definition or objectives of an alternatives assessment, the department may prepare an independent alternatives assessment. When the department prepares an independent alternatives assessment, it may recover its costs from the manufacturers whose products are covered by the alternatives assessment. Costs must be apportioned among manufacturers according to the amount of the chemical used in each manufacturer's product and the estimated number of units of each manufacturer's product sold in Washington. Each manufacturer must provide the department information required under section 6(1) (a) through (f) of this act should the department need to recover costs under this section. Any alternatives assessment conducted by the department must include a process to involve interested parties.

(7) The department may rely on existing information indicating that a safer alternative for a chemical exists if that information is equivalent to an alternatives assessment.

NEW SECTION. **Sec.**  (1) The department, in consultation with the department of health, shall prepare a summary report of all reviewed alternatives assessments and other relevant information assembled by the department for a chemical under section 7 of this act. The summary report must include a determination of the completeness of the alternatives assessments reviewed, whether a safer alternative exists, and identification of unsuitable alternatives.

(2) The department shall seek public input on its determination, including a notice on the department's web site in the Washington State Register and shall submit the final report to the governor and the appropriate committees of the legislature in compliance with RCW 43.01.036.

NEW SECTION. **Sec.**  (1) If the department determines that a safer alternative exists, based on a completed alternatives assessment or equivalent information, the department shall, by rule, prohibit specific uses of the chemical, or prohibit the sale, offer for sale, or distribution of a specific product or products containing the chemical. Manufacturers may not use a chemical determined by the department to be an unsuitable alternative to replace a chemical restricted under this section.

(2) The department shall establish reasonable deadlines for manufacturers to comply with any prohibition adopted under subsection (1) of this section. In setting reasonable deadlines, the department shall consider information such as existing product inventory. No prohibition may take effect sooner than twelve months after rule adoption.

(3) Manufacturers of a product that is subject to a chemical content prohibition shall make available within sixty days of a request by the department a certificate of compliance stating that the product meets the requirements of the prohibition adopted under subsection (1) of this section. A certificate of compliance must include the following:

(a) Chemical names and chemical abstracts service registry numbers for all chemicals that currently contribute to the specific function previously served by the prohibited chemical;

(b) How the manufacturer is meeting the function of the prohibited chemical with a safer alternative; and

(c) The signature of an authorized official of the manufacturer.

(4) The department shall provide guidance on safer alternatives that includes a list of safer alternatives.

NEW SECTION. **Sec.**  (1) A manufacturer violating a requirement of this chapter, a rule adopted under this chapter, or an order issued under this chapter, is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense.

(2) Any penalty provided for in this section, and any order issued by the department under this chapter, may be appealed to the pollution control hearings board.

(3) All penalties collected under this chapter shall be deposited in the state toxics control account created in RCW 70.105D.070.

NEW SECTION. **Sec.**  Manufacturers submitting information or records to the department may request that the information or records be made available only for the confidential use of the director, the department, or the appropriate division of the department. The director shall give consideration to the request and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of chapter 43.21A RCW, the director may grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 33 are each 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 70.94 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, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 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, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) 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 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) 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 70.95.205.

(h) 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.

(i) 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.

(j) 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).

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

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

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

(n) 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.

(o) Decisions regarding a restriction, order, or penalty issued under chapter 70.--- RCW (the new chapter created in section 17 of this act).

(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 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, 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.

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 34 are each 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 70.94 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, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 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, 70.94.211, 70.94.332, 70.105.095, 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 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(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 70.95.205.

(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.

(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 regarding a restriction, order, or penalty issued under chapter 70.--- RCW (the new chapter created in section 17 of this act).

(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 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, 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.**  A new section is added to chapter 43.131 RCW to read as follows:

The authority of the department of ecology to do the following under the authority of chapter 70.--- RCW (the new chapter created in section 17 of this act) expires June 30, 2025: Require manufactures to provide information on chemicals and conduct alternatives assessments; prepare summary reports on alternatives assessments; prohibit the use of chemicals, the sale, offer for sale, or distribution of a product containing a prohibited chemical; and assess penalties.

NEW SECTION. **Sec.**  A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2026:

(1) Section 4 of this act;

(2) Section 6 of this act;

(3) Section 7 of this act;

(4) Section 8 of this act;

(5) Section 9 of this act;

(6) Section 10 of this act; and

(7) Section 12 of this act.

NEW SECTION. **Sec.**  Sections 4 through 12 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Section 13 of this act expires June 30, 2019.

NEW SECTION. **Sec.**  Section 14 of this act takes effect June 30, 2019.

NEW SECTION. **Sec.**  The sum of one million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 2017, from the state toxics control account to the department of ecology for the purposes of this act."

**2SSB 5056** - S AMD **94**

By Senator McCoy

On page 1, beginning on line 1 of the title, after "plans;" strike the remainder of the title and insert "amending RCW 70.240.010, 70.240.050, 43.21B.110, and 43.21B.110; adding a new section to chapter 70.240 RCW; adding new sections to chapter 43.131 RCW; adding a new chapter to Title 70 RCW; prescribing penalties; making an appropriation; providing an effective date; and providing an expiration date."

EFFECT: (1) Authorizes the department of ecology and the department of health to conduct chemical action plans.

(2) Adds chemicals identified as high priority chemicals and chemicals of high concern for children to the list of chemicals to select from for a CAP.

(3) Until June 30, 2025:

(a) Authorizes the department of ecology to require manufacturers to provide information about a chemical selected in order to complete a CAP.

(b) Authorizes the department of ecology to require manufacturers to conduct alternatives assessments consistent with CAP recommendations.

(c) Requires the department of ecology to review alternatives assessments to determine safer alternatives.

(d) Requires the department of ecology and the department of health to prepare a summary report of all reviewed alternatives assessments.

(e) Authorizes the department of ecology to prohibit, by rule, the use of substances based on determination from the alternatives assessment of a safer alternative. The rule may not take effect sooner than 12 months after adoption.