H-0730.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1204**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Peterson, Doglio, Frame, Slatter, Macri, and Goodman

AN ACT Relating to the responsible management of plastic packaging; amending RCW 43.21B.110; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) The legislature finds that policies enacted by China banning plastic packaging waste imported from the United States have illuminated problems and concerns with how waste is managed worldwide. These concerns are echoed in Washington state and emphasize the need for socially and environmentally responsible management and disposal of plastic packaging. The beneficial attributes of plastic packaging, including its durability, low cost, and lightweight character, are also those that make plastic packaging detrimental to the environment. The low cost of plastic packaging contributes to it being used widely, and its durability means that it will take thousands of years for it to degrade in the environment. Additionally, the legislature finds that the costs and responsibilities for managing plastic packaging have been historically externalized from plastic packaging producers to consumers, utility rate payers, local governments, and solid waste facilities.

(2) The legislature intends that producers of plastic packaging take responsibility for the design and management of their packaging in a manner that ensures minimal social and environmental impacts. Producers of plastic packaging must be involved from product design to end-of-life management. This involvement of producers is necessary to incentivize innovation and research into packaging design that minimizes environmental impacts, promotes the use of recycled content in plastic packaging, and ensures funding for collection, sorting, reprocessing, and end-of-life management services.

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

(1) "Beach litter" means any persistent solid material that is manufactured or processed and disposed of or abandoned into the shoreline environment, without regard to whether the means by which the material reached the shoreline environment were direct or indirect or intentional or unintentional.

(2) "Brand" means a name, symbol, word, or mark that identifies a product and attributes the product to the owner of the brand as the producer.

(3) "Commission" means the Washington utilities and transportation commission.

(4) "Compostable" means capable of undergoing aerobic biological decomposition in a system meeting the requirements of chapter 70.95 RCW, that results in the material broken down primarily into carbon dioxide, water, inorganic compounds, and biomass.

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

(6) "Disposal" includes incineration or use of a landfill, as the terms "incineration" and "landfill" are defined under RCW 70.95.030, or energy recovery from waste materials as end-of-life options.

(7) "End-of-life management" means the collection, sorting, reprocessing, and management of materials, products, and product packaging for reuse, recycling, composting, or disposal.

(8) "Energy recovery" means a process for converting solid waste into usable energy and for reducing the volume of solid waste.

(9) "Food service product" means a product including containers, plates, bowls, cups, lids, straws, cocktail picks, splash sticks, stirrers, meat trays, hinged or lidded containers, deli rounds, utensils, chop sticks, sachets, condiment packaging, portion cups, sandwich wrap, wrappers, and other products that are intended for one-time use for food or drink offered for sale or use.

(10) "Marine litter" means any persistent solid material that is manufactured or processed and disposed of or abandoned into the marine environment, without regard to whether the means by which the material reached the marine environment were direct or indirect or intentional or unintentional.

(11) "Material recovery facility" means a facility employing various manual and machine processes to sort recyclable materials, remove contamination, and consolidate materials for shipment.

(12) "Mechanical recycling" means the physical recovery of materials from solid waste for recycling that does not alter the chemical composition of the constituent materials of the solid waste.

(13) "Person" includes a firm, business, corporation, sole proprietorship, authority, limited liability company, general partnership, limited partnership, limited liability partnership, association, cooperative, political subdivision, government agency, unit of local government, Indian tribe, or any other entity of any kind or nature.

(14) "Plan" means information that describes arrangements by producers to fulfill the requirements of this chapter.

(15)(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: (i) Is used to protect, contain, or transport a commodity or product at any point from manufacture to its place of use by a consumer; (ii) is 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; or (iii) are plastic bags and food service products.

(b) "Plastic packaging" does not include packaging that meets ASTM D6400 or ASTM D6868 standard specifications.

(16) "Plastic packaging category" means a group of plastic packaging that has similar properties such as chemical composition and properties, shape, or other characteristics, defined by a stewardship organization for the purposes of implementing best management practices for that particular plastic packaging group, for assigning costs to the producers to implement the plastic packaging stewardship program, and for reporting data and results.

(17) "Plastic packaging stewardship program" or "program" means a program implemented by a stewardship organization for the collection, transportation, end-of-life management, and litter cleanup of plastic packaging.

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

(19) "Producer of plastic packaging" means a person that meets one of the criteria in (a) through (d) of this subsection, in descending order of priority, for assigning responsibility to meet the requirements of this chapter:

(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;

(b) Is the first 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;

(c) Sells at retail a product, to which plastic packaging has been applied, acquired from an importer that is the producer; or

(d) Elects to assume the responsibility and register in lieu of a producer as defined under (a) through (c) of this subsection.

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

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

(21) "Recycling" has the same meaning as defined in RCW 70.95.030.

(22) "Reprocessing" means an action after material sorting whereby materials are transformed into a refined state prior to being remanufactured into a new product.

(23) "Retailer" means a person who offers products for sale at retail through any means including, but not limited to, stores or shops and remote offerings such as sales outlets, catalogs, or the internet.

(24) "Rigid plastic packaging container" means any plastic packaging container having an inflexible finite shape or form, maintaining the same shape empty as full, except for containers that meet ASTM D6400.

(25) "Secondary material recovery facility" means an industrial facility that accepts difficult to sort or low-volume or low-value materials from material recovery facilities and, using advanced technologies, conducts further separation and contamination removal to aggregate materials for shipment and disposal of nonrecyclable residuals.

(26) "Sorting" means to separate materials into items with similar properties at a primary or secondary material recovery facility in preparation for their reuse, recycling, or sale as a commodity.

(27) "Standard specification" means:

(a) ASTM D6400—Standard specification labeling of plastics designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019; and

(b) ASTM D6868—Standard specification for labeling of end items that incorporate plastics and polymers as coatings or additives with paper and other substrates designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019.

(28) "Stewardship organization" means a nonprofit organization that has qualified under 501(c)(3) of the internal revenue code and is designated and financed by a producer or a group of producers to act as an agent on behalf of each producer to develop and operate a plastic packaging stewardship program required under this chapter.

(29) "Waste management hierarchy" means a management system of plastic packaging that is put into the marketplace, collected, sorted, and reprocessed and prioritized in descending order as follows:

(a) Prevention and waste reduction;

(b) Reuse;

(c) Mechanical recycling;

(d) Chemical recycling, which converts plastic materials into smaller molecules as a feedstock for the production of new petrochemicals and plastics; and

(e) Energy recovery, incineration, or landfill, as those terms are defined under RCW 70.95.030.

NEW SECTION. **Sec.**  (1)(a) Beginning January 1, 2022, a producer of plastic packaging may not sell, offer for sale, or distribute plastic packaging for use in Washington unless the producer is participating in a plastic packaging stewardship organization with a plan approved by the department. Producers may satisfy participation obligations individually or jointly with other producers.

(b) By June 1, 2021, each producer must ensure that a plan is submitted on its behalf to the department by a stewardship organization.

(2) After July 1, 2022, a stewardship organization must begin implementing its plan no later than three months after the department approves the plan submitted consistent with section 4 of this act.

(3) A producer is exempt from the requirements of this chapter if the producer:

(a) Generates less than one million dollars in annual revenues;

(b) Generates less than one ton of plastic packaging supplied to Washington state residents per year; or

(c) Operates as a single point of retail sale and is not supplied or operated as part of a franchise.

(4) Retailers that are not producers are exempt from the requirements of this chapter.

NEW SECTION. **Sec.**  (1) A stewardship organization must submit a plan to the department that describes the management of plastic packaging according to the program elements established in sections 5 through 15 of this act.

(2) A plan must include, but is not limited to:

(a) Stewardship organization contact information and a list of participating producers and brands covered by the program;

(b) A description of the plastic packaging categories for which the program and its members are taking responsibility including:

(i) Baseline data for the current management practices for each plastic packaging category organized according to the waste management hierarchy;

(ii) Goals for each plastic packaging category to progressively manage plastic packaging higher in the waste management hierarchy including:

(A) Assignment of each plastic category or subcategory to a best management practice, aligned with the waste management hierarchy, and a description and timeline for how the stewardship organization will achieve a minimum goal of eighty percent capture of the plastic category into its assigned best management practice;

(B) A description of how the stewardship organization will manage the remaining amount of packaging not captured in its assigned best management practice in such a way that it does not become litter or contamination in recycling or compost systems; and

(C) For categories that are managed by energy recovery, incineration, or landfill, a justification and comprehensive analysis, available to the public, for why energy recovery, incineration, or landfill is the best management practice;

(c) A process for determining the amount of packaging participating producers sell in or into the state each year, by plastic packaging category, that will be reported annually to the department, at a minimum, in an aggregate amount by plastic packaging category;

(d) A comprehensive analysis of types, quantity, and weight of plastic packaging litter by category or brand found in public places, freshwater and marine environments, and in materials managed at compost facilities or other facilities handling organic wastes;

(e) A comprehensive analysis of the overall amount of packaging in the recycling waste stream containing more than de minimis food residue or food waste. The analysis must include: An evaluation of the impact of residual food on recycling waste management and the amount of food waste that would be diverted to the compost stream if compostable food packaging were used as an alternative;

(f) A detailed budget and description of the funding mechanism including:

(i) Demonstration that the funding is sufficient to implement the stewardship program; and

(ii) The process for allocating costs to the participating producers;

(g) A description of how the stewardship organization will work with the department of commerce, local economic development agencies, and others to fund local infrastructure investment, business development, and job creation;

(h) A description of how the stewardship organization will work with and fund groups that collect plastic packaging litter from public places and freshwater and marine environments in Washington;

(i) A description of how the stewardship organization will work with and compensate organic waste collection programs and commercial compost facilities and other facilities managing organic wastes, to prevent and remove plastic packaging contamination in these programs and at these facilities;

(j) A description of how the stewardship organization will work with its program members and provide incentives to reduce litter, improve the reuse and recyclability of members' packaging through design, material selection, and reduction or elimination of toxic substances;

(k) A description of the process to consider and establish innovative means to increase collection of plastic packaging produced by members of the plan, such as through buy back or deposit and return mechanisms;

(l) A description of the process for producers to participate in the postconsumer recycled content trade credit mechanism and verification process, as established under section 9 of this act; and

(m) Documentation detailing how all calculations, analyses, and figures in the plan are determined.

NEW SECTION. **Sec.**  (1) Product stewardship organizations must provide for widespread, convenient, and equitable access to collection opportunities for the producer's plastic packaging in all counties and tribal lands within the state, including rural and island communities, unless otherwise approved by the department, after consultation with the product stewardship program's advisory committee and other stakeholders. A product stewardship organization may rely on a range of means to collect various categories of covered packaging including, but not limited to, curbside collection, depot drop-off, and retailer take-back.

(a) Plastic packaging collection options must include curbside or multifamily recycling collection services provided by municipal and tribal programs, municipal and tribal contracted programs, and solid waste collection companies regulated by the commission where those services exist, if:

(i) The category of plastic packaging is suitable for curbside or multifamily recycling collection and can be effectively sorted by the facilities receiving the curbside collected material;

(ii) The provider of the curbside or multifamily service agrees to include the category of plastic packaging as an accepted material;

(iii) The plastic packaging category is not handled through a deposit and return scheme or buy back system that relies on a collection system other than curbside or multifamily collection; and

(iv) The provider of the curbside or multifamily service agrees to the product stewardship program compensation arrangement.

(b) Curbside collection options for plastic packaging categories destined for disposal may be provided only by municipal programs, municipal contracted programs, or solid waste collection companies regulated by the commission.

(2) Product stewardship programs must:

(a) Work with and fully compensate municipalities, solid waste collection, sorting, and reprocessing companies, and others to utilize existing curbside or multifamily and other collection programs for the management and disposal of plastic packaging;

(b) Ensure that the collection means and systems utilized direct the collected plastic packaging to the most appropriate plastic management alternatives; and

(c) Provide periodic surveying and material stream audits to determine effectiveness and convenience of collection services.

NEW SECTION. **Sec.**  The product stewardship program must:

(1) Ensure that:

(a) The collection means and systems utilized direct the plastic packaging to facilities that are effective in sorting and reprocessing plastic packaging prior to shipment in a form ready for remanufacture into new products;

(b) Plastic packaging exported for recycling is managed in an environmentally sound and socially just manner at facilities operating with human health and environmental protection standards that are broadly equivalent to those required in the United States and other countries that are members of the organization for economic cooperation and development. The product stewardship program must include measures to track, verify, and publicly report that recycled plastics are managed responsibly;

(c) Plastics are sorted to specific plastic packaging resin type prior to export to countries that are not members of the organization for economic cooperation and development and are not exported as mixed plastics that require further separation to remove contamination and nonrecyclable plastics and other materials; and

(d) Incentives, including economic instruments and other measures, are adequate to make certain the waste management hierarchy is applied to plastic packaging that is put into the marketplace, collected, sorted, and reprocessed;

(2) Take measures to: (a) Promote high-quality recycling; and (b) meet the necessary quality standards for the relevant facilities that manufacture new products from the collected, sorted, and reprocessed materials; and

(3) Prioritize the recycling of plastic packaging into the same category of product as the original over recycling that results in a product of a lower quality, functionality, or value than the original item.

NEW SECTION. **Sec.**  (1) The product stewardship program must prevent plastic packaging from becoming litter and collect littered plastic packaging from public places and freshwater and marine environments in Washington.

(2) The product stewardship program must address the litter of plastic packaging by:

(a) Funding and working with groups that collect plastic packaging litter from public places and freshwater and marine environments within Washington; and

(b) Working with producers to reduce plastic packaging through product design and program innovations.

NEW SECTION. **Sec.**  The product stewardship program must provide effective outreach, education, and communications regarding reuse, collection, and prevention of litter of plastic packaging. The stewardship organization must undertake outreach, education, and communications that are sufficient to attain the plastic packaging management goals established under section 4 of this act and prevent contamination by plastic packaging in other management systems or in other materials. At a minimum, activities must include:

(1) Consulting on education, outreach, and communications with the product stewardship program's advisory committee and other stakeholders;

(2) Coordinating with and assisting local municipal programs, municipal contracted programs, solid waste collection companies regulated by the commission, and other entities providing services to the product stewardship program;

(3) Developing and providing outreach and education to the state's diverse ethnic populations, through translated and culturally appropriate materials, including in-language and targeted outreach;

(4) Establishing consumer web sites and mobile applications that provide information about methods to prevent plastic packaging pollution and how consumers may access and use collection services;

(5) Working with product stewardship program participants to label plastic packaging with information to assist consumers to responsibly manage plastic packaging;

(6) Determining the effectiveness of outreach, education, communications, and convenience of services, including to diverse ethnic and rural and island communities by conducting focus groups and characterization studies, surveying, cart studies, and other means. The program must conduct these activities at least as often as, and prior to, product stewardship plan updates, as required under section 12 of this act.

NEW SECTION. **Sec.**  A stewardship organization must establish and implement a postconsumer recycled content trade credit mechanism, reporting, and verification process for participating producers.

(1) The postconsumer recycled content trade credit mechanism must be supported by reporting procedures that allow stewardship organizations and the department to verify producer compliance using the postconsumer recycled content trade credit mechanism.

(2) The postconsumer recycled content trade credit mechanism may be used to meet compliance requirements established under section 14 of this act.

(3) Producers required to meet recycled content requirements of this chapter may buy, sell, or trade credits to achieve compliance with the recycled content requirements of this chapter through the postconsumer recycled content trade credit mechanism. Producers that exceed the required percent postconsumer recycled content in their covered products may:

(a) Sell or trade credits to other producers that do not meet the requirements; or

(b) Bank and apply the postconsumer recycled content trade credits to their own products that do not meet the recycled content requirements.

NEW SECTION. **Sec.**  A producer or group of producers must:

(1) Pay all administrative and operational costs necessary to establish and implement the plastic packaging stewardship program in which they participate, including:

(a) Financing statewide collection of plastic packaging that the stewardship organization has taken responsibility for in its plan, including but not limited to plastic packaging for reuse, recycling, and disposal;

(b) Covering the full costs for:

(i) Services provided by municipal programs, municipal contracted programs, or solid waste collection companies regulated by the commission, and other services, such as retailer take-back or drop-off depots, which may be established by contract or other form of agreement as necessary;

(ii) Sorting, reprocessing, and marketing, including costs incurred by municipalities, solid waste collection companies, material recovery facilities, secondary material recovery facilities, reprocessors, and plastic recovery facilities, as well as the costs required to meet the objectives of environmentally sound reprocessing and marketing requirements established in section 6 of this act; and

(c) Verifying and reporting voluntary agreements by collectors to participate within the plastic packaging stewardship program;

(2) Ensure that a minimum of ten percent of the overall plastic packaging stewardship program expenditures are dedicated for market and recycling infrastructure development in Washington state, which may include installing or upgrading equipment to improve sorting of plastic packaging or mitigating the impacts of plastic packaging to other commodities at existing sorting and reprocessing facilities;

(3)(a) Provide a minimum of ten percent of overall program expenditures to:

(i) Clean up plastic packaging litter from public places and other environments that is in addition to and supplemental to activities funded by the litter tax imposed by RCW 82.19.010; and

(ii) Remove plastic packaging contaminants at compost and other facilities that manage organic materials;

(b) The minimum percentage of program expenditures required under this subsection and subsection (2) of this section must be based on the plastic packaging stewardship program previous fiscal year's expenditures, except for the first year of the program, which must be based on the program's overall budgeted expenditures;

(4) Set the funding level for activities specified under this section so that it is sufficient to meet plastic packaging management goals established in the plan submitted under section 4 of this act. The funding level must be no less than one dollar per Washington resident per year and must be annually adjusted for inflation based upon changes in the consumer price index;

(5) Maintain a financial reserve sufficient to operate the program in a fiscally prudent and responsible manner;

(6) Establish and maintain program elements necessary to implement the stewardship program created under this chapter; and

(7) Reimburse the department's operating and administrative costs, as required under section 16 of this act.

NEW SECTION. **Sec.**  (1) A stewardship organization must establish program participation charges for producers to fully cover all program costs, consistent with section 10 of this act.

(2) A stewardship organization must structure program charges to provide producers with financial incentives, as required under section 7 of this act, to reward waste reduction and recycling compatibility innovations and best practices and discourage designs or practices that increase system costs of managing plastic packaging. The stewardship organization may adjust charges to be paid by participating producers based on factors that impact system costs. At a minimum, charges must be:

(a) Variable based upon:

(i) Costs to properly manage categories of plastic packaging;

(ii) Category and brand of plastic packaging, in relation to the costs to clean up the producer's plastic packaging from public places, freshwater and marine environments, and in materials managed at compost facilities or other facilities handling organic wastes;

(b) Higher for packaging that:

(i) Bonds plastic together with other materials, such as paper or metal;

(ii) Would typically be recyclable except that as a consequence of its design, it has the effect of disrupting recycling processes; or

(iii) Includes labels, inks, and adhesives containing heavy metals or other toxic substances;

(c) Lower for:

(i) Bottles and other containers that have nondetachable caps or other innovations and design characteristics to prevent littering;

(ii) Nonfood contact containers and other nonfood contact packaging that are specifically designed to be reusable or refillable and have a high reuse or refill rate;

(iii) Packaging that has verified postconsumer plastic packaging recycled content that exceeds the minimum requirements established in section 14 of this act and whose extra credits have not been traded or applied to other packaging through the postconsumer recycled content trade credit mechanism. The charges must be adjusted based upon the percentage of recycled content derived from postconsumer plastic packaging, as long as the recycled content does not disrupt the potential for future recycling; and

(iv) Plastic packaging that is made of at least ninety percent by weight in any combination of: (A) Postconsumer plastic packaging recycled content; or (B) plastics derived from land or freshwater or marine environment litter.

(3)(a) When required incentives are no longer relevant or needed, a stewardship organization, after consultation with its advisory committee and other stakeholders, may propose an updated plan and petition the department to eliminate specific incentives.

(b) Upon department approval of the petition and amended plan, incentives may no longer be enforced or required, unless the department determines there are unanticipated consequences from removing the requirements.

(c) The department may reinstate incentive requirements by providing written notice to the plastic product stewardship organization. The stewardship organization must update its plan to reinstate the incentives during the next fiscal year.

NEW SECTION. **Sec.**  (1)(a) A stewardship plan must be updated two years after the program begins and every five years thereafter. Each stewardship organization operating a plastic packaging stewardship program must update its stewardship plan, in consultation with the program's advisory committee and other stakeholders, and submit the updated plan to the department for review and approval.

(b) A plastic packaging stewardship organization's plan must provide a public web site with information as required under section 4 of this act.

(2)(a) Stewardship plans must be amended when the plastic packaging stewardship program fails to provide services in each county in the state or meet other significant plan and program requirements. Within ninety days, the stewardship organization must submit to the department an amended plan addressing how the program will be modified to meet the program requirements.

(b) The stewardship organization must notify the department of any modification to the program. If the department determines that the stewardship organization has significantly modified the program described in the plan, the stewardship organization, after consultation with its advisory committee and other stakeholders, must submit a proposed plan amendment describing the changes to the department within ninety days of the determination.

(3) Within ninety days of the receipt of a proposed amended plan, the department must determine whether the revised amended plan complies with this chapter. The department must send a letter notifying the stewardship organization of: (a) Approval; or (b) disapproval, including the reasons for rejecting the plan. The stewardship organization must provide the department's letter of disapproval to its advisory committee. The stewardship organization must submit a revised plan within sixty days after receipt of the letter of disapproval.

NEW SECTION. **Sec.**  Beginning April 1, 2023, and each April 1st thereafter, a stewardship organization must submit an annual report to the department in a format developed by the department. The annual report must include a description of the following:

(1) All elements required of the plan and program in sections 4 through 15 of this act, including collection, reprocessing, and marketing, litter clean up, and recycled content;

(2) The program's progress in meeting goals identified in the plan submitted consistent with section 4 of this act. The information reported under this subsection (2) must include, but is not limited to:

(a) Reports on the baseline of plastic packaging, by type and brand, found in litter, beach litter, freshwater and marine debris, and compost facilities;

(b) Progress in meeting goals to progressively reduce the quantity and portion of plastic packaging in litter, beach litter, freshwater and marine debris, and compost facilities; and

(c) Reports on the compliance of program members with recycled content requirements of this chapter, where applicable;

(3) A description of planned changes to the program that are being considered for the coming year, but which do not require a new plan or plan amendment to be filed with the department under section 12 of this act;

(4) Names, locations, services provided, and plastic packaging material volumes handled by all collection services and locations and by all sorters and reprocessors, by plastic packaging category covered by the program;

(5) Reports on the determination of how much packaging its program members sell in or into the state each year, by plastic packaging category.

NEW SECTION. **Sec.**  (1)(a) Beginning January 1, 2023, only rigid plastic packaging containers containing at least twenty-five percent postconsumer plastic packaging material and labeled as such may be sold, offered for sale, or distributed for use in Washington.

(b) A producer that does not meet the twenty-five percent postconsumer plastic packaging content requirement must participate in a postconsumer recycled content trade credit mechanism provided by a stewardship organization, consistent with the plan element required under section 9 of this act.

(2) Subsection (1) of this section does not apply where prohibited by federal law and to rigid plastic packaging containers that:

(a) Contain drugs or medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(b) Contain toxic or hazardous products regulated by the federal insecticide, fungicide, and rodenticide act (7 U.S.C. Sec. 136 et seq.); or

(c) Are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used or recycled content material by federal packaging material specifications and testing standards set forth in Title 49 C.F.R. Secs. 178.509 and 178.522, or are subject to testing standards set forth in Title 49 C.F.R. Secs. 178.600 through 178.609, inclusive, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

(3) Beginning January 1, 2023, a producer or other person may only sell, offer for sale, or distribute for use in Washington:

(a) Plastic film bags for garbage, waste container, carryout shopping, produce, take-out food, home food delivery, newspaper, dry cleaning, wet umbrella, and air shipping, and shipping envelopes that are made from at least twenty-five percent postconsumer plastic packaging and are labeled as such; and

(b) Bags that meet the standard specifications as compostable.

(4) A producer whose noncompostable plastic packaging does not meet the twenty-five percent postconsumer plastic packaging content requirement under subsection (3) of this section must fulfill its obligation through participating in a postconsumer recycled content trade credit mechanism provided by a stewardship organization to its program members consistent with section 14 of this act.

(5) Beginning January 1, 2020, a producer or person may only sell, offer for sale, or distribute for use in Washington plastic collection bins made from at least twenty-five percent postconsumer plastic packaging recycled content.

(a) A person with an existing municipal contract for plastic collection bins that was in place prior to August 1, 2019, is exempt from this section until the expiration or renewal date of the contract. A new or renewed contract whose terms take effect after August 1, 2019, must be consistent with the requirements of this section. Exempt persons are encouraged to meet the requirements of this section.

(b) Producers of plastic collection bins, including persons that sell, offer for sale, distribute, or provide collection bins in Washington must provide written evidence or certification, upon request, to the department or any municipality, retailer, stewardship organization, solid waste collection company, or other purchaser of collection bins showing that their collection bins meet the requirements of this section.

(c) For the purposes of this subsection (5), "plastic collection bins" include plastic bins, cans, carts, toters, or other receptacles used to collect recyclables, compostable materials, or garbage used by solid waste collection services.

NEW SECTION. **Sec.**  (1) A stewardship organization must establish an advisory committee that represents a range of interested and engaged persons relevant to the program's covered packaging, including collection providers, clean-up service providers, and Washington state residents. At a minimum, the advisory committee must include one person representing each of the following:

(a) The department;

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

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

(d) Public sector recycling and solid waste industries;

(e) Private sector recycling and solid waste industries;

(f) Recycled plastic feedstock users;

(g) Public place litter programs;

(h) Freshwater and marine litter programs;

(i) Environmental organizations; and

(j) Indian tribes.

(2) The stewardship organization must periodically provide a process to receive comment from additional stakeholders, and community members, that includes diverse ethnic populations.

(3) The stewardship organization must reimburse representatives of community groups, tribal, and nonprofit members for their expenses related to participating on the advisory committee. Other members may be compensated for travel expenses on an as needed basis to ensure their ability to participate.

(4) The stewardship organization must:

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

(b) Request and consider comments from its advisory committee prior to submission of plan updates and amendments to the department;

(c) Report comments to the department as an appendix to submitted plan updates and revisions; and

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

NEW SECTION. **Sec.**  (1) Beginning April 1, 2023, the department shall annually determine its costs for administering and enforcing plastic packaging stewardship programs under this chapter. The amount must be sufficient to cover but not exceed the costs to the department.

(2) The department shall estimate the annual costs for the period of July 1st through June 30th and notify each stewardship organization by April 1st of the prior fiscal year. If there is more than one stewardship organization implementing a plastic packaging stewardship program in Washington, the cost must be divided proportionately between organizations, based on the percent of total plastic packaging sold into the state by the producers represented by each stewardship organization.

(3) The department must make the proposed annual costs, including an accounting of the costs, available for public review and comment for at least thirty days.

(4) Any unspent money from the previous twelve-month period must be retained in the responsible plastic packaging stewardship account created in section 19 of this act and applied to the amount paid by stewardship organizations to the department in the following year.

(5) The stewardship organization must submit the amount determined to cover department costs, as established under subsection (3) of this section, by June 30, 2022, and annually thereafter.

(6) By January 1, 2022, each stewardship organization must submit an administration payment of two hundred thousand dollars to the department to cover rule making, initial program oversight, and other costs anticipated to be incurred by the department prior to June 30, 2022.

NEW SECTION. **Sec.**  (1) The department must:

(a) Review submitted plastic packaging stewardship plans within one hundred twenty days of receipt, except for amended plans as established under section 12(3) of this act;

(b) Approve plans that establish a stewardship program meeting the requirements of this chapter; and

(c) Provide notice to the stewardship organization when the plan is:

(i) Not approved and the reasons for rejection; or

(ii) Approved.

(2) Upon approval, the department must make plans and plan amendments available for public review and comments for thirty days. The information must be posted on the department's web site that provides links to plastic product stewardship organizations plan web sites.

(3)(a) The department may administratively impose a civil penalty on any person who violates this chapter in an amount of up to one thousand dollars per violation per day.

(b) The department may assess a civil penalty of up to ten thousand dollars per violation per day on any person that intentionally, knowingly, or negligently violates this chapter.

(c) Any person who incurs a penalty under this section may appeal the penalty to the pollution control hearings board established by chapter 43.21B RCW.

(4) The department may request information from the stewardship organization that is in addition to the annual reporting requirements in section 13 of this act.

(5)(a) The department must adopt rules for:

(i) Plan content as required under section 4 of this act; and

(ii) The process used to determine costs and application of the costs proportionately between stewardship organizations, as required under section 16 of this act.

(b) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. **Sec.**  (1) The legislature anticipates that the plastic packaging stewardship programs required in this chapter will have the effect of reducing or replacing some current costs for providing existing management of plastic packaging by local governments and regulated service providers and expanding plastic packaging management beyond what is currently financed by local governments and rate payers. When the costs to local governments and service providers are reduced or replaced, the local governments and service providers are encouraged to:

(a) Invest no less than ten percent of savings to waste prevention programs and activities that reduce the use of single-use plastic packaging that is designed or intended to be used once before being disposed or recycled, especially such packaging that is commonly found in public places and as streetside, beach, freshwater, and marine litter; and

(b) Reduce and adjust rates that would have otherwise been paid by ratepayers for services that are not subject to regulation by the commission under chapter 81.77 RCW.

(2) Services subject to regulation by the commission that receive payment for collection or sorting services under this chapter must report payments made by stewardship organizations or relevant cost reductions related to their management of plastic packaging due to the stewardship program to the commission in relevant rate filings under chapter 81.77 RCW. Nothing in this section limits the authority of the commission to set and adjust rates for services regulated by the commission.

NEW SECTION. **Sec.**  The responsible plastic packaging stewardship account is created in the state treasury. All receipts received by the department from stewardship organizations must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department only for implementing, administering, and enforcing plastic packaging stewardship programs.

**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, 70.275.100, section 17 of this act, 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.

(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.**  Sections 1 through 19 of this act constitute a new chapter in Title 70 RCW.

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

**--- END ---**