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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6213

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State of Washington

66th Legislature

2020 Regular Session

**By** Senate Ways & Means (originally sponsored by Senators Das, Carlyle, Van De Wege, Dhingra, Kuderer, Lovelett, Nguyen, Billig, Rolfes, Saldaña, Darneille, Hasegawa, Lias, Keiser, Pedersen, Stanford, Frockt, Wellman, and Wilson, C.)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to certain expanded polystyrene products;  
2 reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new  
3 chapter to Title 70 RCW; prescribing penalties; providing an  
4 effective date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the:

7 (a) Recycling development center established in chapter 70.370  
8 RCW was created to facilitate the development of markets for recycled  
9 products and to assist businesses with transforming or  
10 remanufacturing waste materials into usable and marketable materials  
11 or products; and

12 (b) Evaluation and assessment of plastic packaging sold into the  
13 state as required under chapter 70.380 RCW will provide options for  
14 reducing plastic packaging.

15 (2) It is the intent of the legislature to: Prohibit all expanded  
16 polystyrene products in coordination with the efforts of the  
17 recycling development center and information provided through the  
18 evaluation and assessment of plastic packaging; and address through  
19 the recycling development center how to assist existing businesses  
20 that employ vulnerable populations in the transition from processing  
21 expanded polystyrene products to processing other materials.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires  
3 otherwise.

4        (1) (a) "Covered product" means the following products made of  
5 expanded polystyrene:

6            (i) A portable container used for cold storage, except for  
7 expanded polystyrene containers used for drugs, medical devices, and  
8 biological materials as defined in the federal food, drug, and  
9 cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable  
10 commodities from a wholesale or retail establishment;

11            (ii) Food service products that include food containers, plates,  
12 clamshell-style containers, and hot and cold beverage cups; and

13            (iii) Void filling packaging products, which means loose fill  
14 packaging material, also referred to as packing peanuts.

15        (b) "Covered product" does not include packaging for raw,  
16 uncooked, or butchered meat, fish, poultry, or seafood, vegetables,  
17 fruit, or egg cartons.

18        (2) "Department" means the department of ecology.

19        (3) "Expanded polystyrene" means blown polystyrene and expanded  
20 and extruded foams that are thermoplastic petrochemical materials  
21 utilizing a styrene monomer and processed by any number of techniques  
22 including, but not limited to, fusion of polymer spheres (expandable  
23 bead polystyrene), injection molding, foam molding, and extrusion-  
24 blow molding (extruded foam polystyrene).

25        (4) "Manufacturer" includes any person, firm, association,  
26 partnership, corporation, governmental entity, organization, or joint  
27 venture that produces covered products or is an importer or domestic  
28 distributor of a product sold or offered for sale in or into the  
29 state.

30        NEW SECTION.    **Sec. 3.**    Beginning June 1, 2023:

31        (1) The sale and distribution of covered products in or into the  
32 state is prohibited.

33        (2) Any void filling loose fill packaging materials sold or  
34 distributed into the state must be compostable.

35        NEW SECTION.    **Sec. 4.**    (1) The department may adopt rules as  
36 necessary for the purpose of implementing, administering, and  
37 enforcing this chapter.

38        (2) The department must:

1 (a) Prepare and post on its web site information regarding the  
2 prohibitions on the sale and distribution of covered products. The  
3 department may develop culturally appropriate and translated  
4 educational materials and resources for the state's diverse ethnic  
5 populations from existing materials used by local jurisdictions and  
6 other states.

7 (b) Provide technical assistance and guidance to manufacturers of  
8 covered products, as requested.

9 (c) Provide written notification and offer information and  
10 assistance to manufacturers and distributors that sell or offer to  
11 sell or distribute covered products who are in violation of this  
12 chapter. For the purposes of this section, written notification  
13 serves as notice of the violation. The department must issue at least  
14 two notices of violation by certified mail to a manufacturer or  
15 distributor prior to assessing a penalty.

16 NEW SECTION. **Sec. 5.** Beginning June 1, 2023:

17 (1) A manufacturer of products in violation of this chapter is  
18 subject to a civil penalty not to exceed two hundred fifty dollars  
19 for each violation in the case of a first offense. Manufacturers that  
20 are repeat violators are subject to a civil penalty not to exceed one  
21 thousand dollars for each repeat offense. Penalties collected under  
22 this section must be deposited in the model toxics control operating  
23 account created in RCW 70.105D.190.

24 (2) Penalties issued under this section are appealable to the  
25 pollution control hearings board established in chapter 43.21B RCW.

26 NEW SECTION. **Sec. 6.** A city, town, county, or municipal  
27 corporation may not implement a local ordinance restricting covered  
28 products unless the ordinance is filed by April 1, 2020, and enacted  
29 by June 1, 2020. An ordinance restricting covered products that was  
30 not enacted as of June 1, 2020, is preempted by this chapter.

31 **Sec. 7.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and  
32 2019 c 290 s 12 are each reenacted and amended to read as follows:

33 (1) The hearings board shall only have jurisdiction to hear and  
34 decide appeals from the following decisions of the department, the  
35 director, local conservation districts, the air pollution control  
36 boards or authorities as established pursuant to chapter 70.94 RCW,  
37 local health departments, the department of natural resources, the

1 department of fish and wildlife, the parks and recreation commission,  
2 and authorized public entities described in chapter 79.100 RCW:

3 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
4 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, section 5  
5 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,  
6 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

7 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
8 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,  
9 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

12 (d) Except as provided in RCW 90.03.210(2), the issuance,  
13 modification, or termination of any permit, certificate, or license  
14 by the department or any air authority in the exercise of its  
15 jurisdiction, including the issuance or termination of a waste  
16 disposal permit, the denial of an application for a waste disposal  
17 permit, the modification of the conditions or the terms of a waste  
18 disposal permit, or a decision to approve or deny an application for  
19 a solid waste permit exemption under RCW 70.95.300.

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

22 (f) Decisions of local health departments regarding the issuance  
23 and enforcement of permits to use or dispose of biosolids under RCW  
24 70.95J.080.

25 (g) Decisions of the department regarding waste-derived  
26 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
27 decisions of the department regarding waste-derived soil amendments  
28 under RCW 70.95.205.

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

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

38 (j) Decisions of the department of natural resources, the  
39 department of fish and wildlife, and the department that are  
40 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW  
2 76.09.050(7).

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

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

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

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

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

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

20 (b) Hearings conducted by the department pursuant to RCW  
21 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
22 90.44.180.

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

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

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

30 **Sec. 8.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and  
31 2019 c 290 s 12 are each reenacted and amended to read as follows:

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33 decide appeals from the following decisions of the department, the  
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38 and authorized public entities described in chapter 79.100 RCW:

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10 by the department or any air authority in the exercise of its  
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14 disposal permit, or a decision to approve or deny an application for  
15 a solid waste permit exemption under RCW 70.95.300.

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

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19 and enforcement of permits to use or dispose of biosolids under RCW  
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27 management plan; conditions contained in a plan; application of any  
28 dairy nutrient management practices, standards, methods, and  
29 technologies to a particular dairy farm; and failure to adhere to the  
30 plan review and approval timelines in RCW 90.64.026.

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

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

26 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act  
27 constitute a new chapter in Title 70 RCW.

28 NEW SECTION. **Sec. 10.** Section 7 of this act expires June 30,  
29 2021.

30 NEW SECTION. **Sec. 11.** Section 8 of this act takes effect June  
31 30, 2021.

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