

2SSB 5022 - S AMD 330

By Senator Das

ADOPTED 03/02/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** FINDINGS—INTENT. (1) The legislature
4 finds that minimum recycled content requirements for plastic beverage
5 containers, trash bags, and household cleaning and personal care
6 product containers, bans on problematic and unnecessary plastic
7 packaging, and standards for customer opt-in for food service
8 packaging and accessories are among actions needed to improve the
9 state's recycling system as well as reduce litter.

10 (2) By implementing a minimum recycled content requirement for
11 plastic beverage containers, trash bags, and household cleaning and
12 personal care product containers; prohibiting the sale and
13 distribution of certain expanded polystyrene products; and
14 establishing optional serviceware requirements as provided for in
15 this chapter; the legislature intends to take another step towards
16 ensuring plastic packaging and other packaging materials are reduced,
17 recycled, and reused.

18 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
19 section apply throughout this chapter unless the context clearly
20 requires otherwise.

21 (1) "Beverage" means beverages identified in (a) through (f) of
22 this subsection, intended for human or animal consumption, and in a
23 quantity more than or equal to two fluid ounces and less than or
24 equal to one gallon:

- 25 (a) Water and flavored water;
- 26 (b) Beer or other malt beverages;
- 27 (c) Wine;
- 28 (d) Distilled spirits;
- 29 (e) Mineral water, soda water, and similar carbonated soft
30 drinks; and

1 (f) Any beverage other than those specified in this subsection,
2 except infant formula or medical food as defined in 21 U.S.C. Sec.
3 360ee(b)(3).

4 (2) "Beverage manufacturer" means a manufacturer of one or more
5 beverages described in subsection (1) of this section, that are sold,
6 offered for sale, or distributed in a plastic beverage container in
7 Washington.

8 (3) "Beverage manufacturing industry" means an association that
9 represents companies that manufacture beverages.

10 (4) "Condiment packaging" means packaging used to deliver single-
11 serving condiments to customers. Condiment packaging includes, but is
12 not limited to, single-serving packaging for ketchup, mustard,
13 relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly
14 and jam, and soy sauce.

15 (5) "Dairy milk" means a beverage that designates milk as the
16 predominant (first) ingredient in the ingredient list on the
17 container's label.

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

19 (7) "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 (8) "Food service business" means a business selling or providing
26 food for consumption on or off the premises, and includes full-
27 service restaurants, fast food restaurants, cafes, delicatessens,
28 coffee shops, grocery stores, vending trucks or carts, home delivery
29 services, delivery services provided through an online application,
30 and business or institutional cafeterias.

31 (9) "Food service product" means a product including, but not
32 limited to, containers, plates, bowls, cups, lids, beverage
33 containers, meat trays, deli rounds, utensils, sachets, straws,
34 condiment packaging, clamshells and other hinged or lidded
35 containers, wrap, portion cups, and other food service products that
36 are intended for one-time use and used for food or drink offered for
37 sale or use.

38 (10) "Household cleaning and personal care product" means
39 products identified in (a) through (f) of this subsection:

40 (a) Laundry detergents, softeners, and stain removers;

1 (b) Household cleaning products;

2 (c) Liquid soap;

3 (d) Shampoo, conditioner, styling sprays and gels, and other hair
4 care products;

5 (e) Lotion, moisturizer, facial toner, and other skin care
6 products; or

7 (f) Oral hygiene products.

8 (11) "Household cleaning and personal care product manufacturing
9 industry" means an association that represents companies that
10 manufacture household cleaning and personal care products.

11 (12) "Plastic beverage container" means a bottle or other rigid
12 container that is capable of maintaining its shape when empty,
13 comprised solely of one or multiple plastic resins and containing a
14 beverage. Plastic beverage container does not include:

15 (a) Refillable beverage containers (i.e., containers that are
16 sufficiently durable for multiple rotations of their original or
17 similar purpose and are intended to function in a system of reuse);

18 (b) Rigid plastic containers or plastic bottles that are medical
19 devices, medical products that are required to be sterile, and
20 nonprescription and prescription drugs, dietary supplements as
21 defined in RCW 82.08.0293, and packaging used for those products;

22 (c) Bladders or pouches that contain wine; or

23 (d) Liners, caps, corks, closures, labels, and other items added
24 externally or internally but otherwise separate from the structure of
25 the bottle or container.

26 (13) "Plastic household cleaning and personal care product
27 container" means a bottle, jug, or other rigid container with a neck
28 or mouth narrower than the base, a minimum capacity of eight fluid
29 ounces or its equivalent volume, a maximum capacity of five fluid
30 gallons or its equivalent volume that is capable of maintaining its
31 shape when empty, comprised solely of one or multiple plastic resins,
32 and containing a household cleaning or personal care product.
33 "Plastic household cleaning and personal care product container" does
34 not include:

35 (a) Refillable household cleaning and personal care product
36 containers (i.e., containers that are sufficiently durable for
37 multiple rotations of their original or similar purpose and are
38 intended to function in a system of reuse); and

39 (b) Rigid plastic containers or plastic bottles that are medical
40 devices, medical products that are required to be sterile, and

1 nonprescription and prescription drugs, dietary supplements as
2 defined in RCW 82.08.0293, and packaging used for those products.

3 (14) "Plastic trash bag" means a bag that is made of
4 noncompostable plastic, is at least 0.70 mils thick, and is designed
5 and manufactured for use as a container to hold, store, or transport
6 materials to be discarded or recycled, and includes, but is not
7 limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner
8 bag, kitchen bag, or compactor bag. "Plastic trash bag" does not
9 include any compostable bags meeting the requirements of chapter
10 70A.455 RCW.

11 (15) "Plastic trash bag manufacturing industry" means an
12 association that represents companies that manufacture plastic trash
13 bags.

14 (16) "Postconsumer recycled content" means the content of a
15 product or packaging made of recycled materials derived specifically
16 from recycled material generated by households or by commercial,
17 industrial, and institutional facilities in their role as end users
18 of the product that can no longer be used for its intended purpose.
19 This includes returns of material from the distribution chain.

20 (17)(a) "Producer of household cleaning and personal care product
21 containers" means a manufacturer or entity that uses containers that
22 are sold, offered for sale, or distributed at a physical retail
23 location or remote sale in this state, in the following hierarchy:

24 (i) A manufacturer or entity who uses a container and sells,
25 offers for sale, or distributes a product in a container under their
26 own brand;

27 (ii) If the container is used by a person other than the brand
28 owner, the producer of the container is the person who is the owner
29 or licensee of a brand or trademark under which a container is sold,
30 offered for sale, or distributed in or into this state;

31 (iii) If there is no person described in (a)(i) and (ii) of this
32 subsection within the United States, the producer of the container is
33 the person who imports the container into the United States for use
34 in a commercial enterprise that sells, offers for sale, or
35 distributes the container in this state; or

36 (iv) The manufacturer or entity under (a)(i) of this subsection
37 who uses a container, under their own brand, may notify the
38 department of another manufacturer or third-party entity that has
39 agreed to fulfill the duties of a producer for designated containers
40 used under this chapter. The notification must be submitted jointly

1 with the manufacturer or third-party entity. In the event that the
2 brand no longer maintains a contract with the manufacturer or entity,
3 the original producer in (a)(i) of this subsection must notify the
4 state within 30 days that the product container has been removed from
5 the market and is no longer reportable for that brand.

6 (b) A "producer of household cleaning and personal care product
7 containers" does not include:

8 (i) Government agencies, municipalities, or other political
9 subdivisions of the state;

10 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
11 social welfare organizations; or

12 (iii) De minimis producers that annually sell, offer for sale,
13 distribute, or import into the country for sale in Washington:

14 (A) Less than one ton of household cleaning and personal care
15 product containers each year; or

16 (B) Household cleaning and personal care products that in
17 aggregate generate less than \$1,000,000 in revenue each year.

18 (18)(a) "Producer of plastic trash bags that are sold, offered
19 for sale, or distributed at physical retail location or remote sale
20 in this state" means, in the following hierarchy:

21 (i) A manufacturer or entity who sells, offers for sale, or
22 distributes plastic trash bags under their own brand;

23 (ii) The person who is the owner or licensee of a brand or
24 trademark under which the plastic trash bags are sold, offered for
25 sale, or distributed in or into this state;

26 (iii) If there is no person described in (a)(i) and (ii) of this
27 subsection within the United States, the producer of the plastic
28 trash bags is the person who imports the plastic trash bags into the
29 United States for use in a commercial enterprise that sells, offers
30 for sale, or distributes the plastic trash bags in this state; or

31 (iv) The manufacturer or entity under (a)(i) of this subsection
32 who sells, offers for sale, or distributes plastic trash bags under
33 their own brand, may notify the department of another manufacturer or
34 third-party entity that has agreed to fulfill the duties of a
35 producer under this chapter. The notification must be submitted
36 jointly with the manufacturer or third-party entity. In the event
37 that the brand no longer maintains a contract with the manufacturer
38 or entity, the original producer in (a)(i) of this subsection must
39 notify the state within 30 days that the product has been removed
40 from the market and is no longer reportable for that brand.

1 (b) A "producer of plastic trash bags" does not include:

2 (i) Government agencies, municipalities, or other political
3 subdivisions of the state;

4 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
5 social welfare organizations; or

6 (iii) De minimis producers that annually sell, offer for sale,
7 distribute, or import into the country for sale in Washington:

8 (A) Less than one ton of plastic trash bags each year; or

9 (B) Plastic trash bags that in aggregate generate less than
10 \$1,000,000 each year in revenue.

11 (19)(a) "Retail establishment" means any person, corporation,
12 partnership, business, facility, vendor, organization, or individual
13 that sells or provides merchandise, goods, or materials directly to a
14 customer.

15 (b) "Retail establishment" includes, but is not limited to, food
16 service businesses, grocery stores, department stores, hardware
17 stores, home delivery services, pharmacies, liquor stores,
18 restaurants, catering trucks, convenience stores, or other retail
19 stores or vendors, including temporary stores or vendors at farmers
20 markets, street fairs, and festivals.

21 (20)(a) "Utensil" means a product designed to be used by a
22 consumer to facilitate the consumption of food or beverages,
23 including knives, forks, spoons, cocktail picks, chopsticks, splash
24 sticks, and stirrers.

25 (b) "Utensil" does not include plates, bowls, cups, and other
26 products used to contain food or beverages.

27 NEW SECTION. **Sec. 3.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
28 BEVERAGE CONTAINERS. (1) Beginning January 1, 2023, beverage
29 manufacturers that offer for sale, sell, or distribute in Washington
30 beverages in plastic beverage containers must meet minimum
31 postconsumer recycled content as required under subsection (3) of
32 this section.

33 (2)(a) On or before April 1, 2022, and annually thereafter,
34 beverage manufacturers that offer for sale, sell, or distribute in
35 Washington beverages in plastic beverage containers must register
36 with the department individually or through a third-party
37 representative registering on behalf of a group of beverage
38 manufacturers.

1 (b) After January 1, 2023, a beverage manufacturer that offers
2 for sale, sells, or distributes in Washington beverages in plastic
3 beverage containers not registered with the department either
4 individually or through a third party may not sell or supply beverage
5 containers in or into Washington state.

6 (c) Registration information must include a list of the beverage
7 manufacturers and the brand names of the beverages represented in the
8 registration submittal. Beginning April 1, 2024, registration
9 information may accompany the annual reporting required under section
10 4 of this act.

11 (d) (i) By January 31, 2022, and every January 31st thereafter,
12 the department must identify the annual costs it will incur to
13 implement this section and sections 4 and 5 of this act in the next
14 fiscal year, including rule making, and invoices of costs for
15 beverage manufacturers or their third-party representatives. The
16 department must determine an annual payment by beverage manufacturers
17 or their third-party representative that is adequate to cover, but
18 not exceed, the department's full costs to implement, administer, and
19 enforce this chapter in the next fiscal year, including rule making.
20 The department must equitably determine payment amounts for an
21 individual beverage manufacturer and third-party representatives.

22 (ii) The department must:

23 (A) Apply any remaining annual payment funds from the current
24 year to the annual payment for the coming year, if the collected
25 annual payment exceeds the department's costs for a given year; and

26 (B) Increase annual payments for the coming year to cover the
27 department's costs, if the collected annual payment was less than the
28 department's costs for a given year.

29 (e) By April 1, 2022, and every April 1st thereafter, beverage
30 manufacturers or their third-party representative must submit a
31 payment as determined by the department under (d) of this subsection.

32 (3) (a) A beverage manufacturer that sells, offers for sale, or
33 distributes plastic beverage containers in or into Washington must
34 meet the following annual minimum postconsumer recycled content
35 percentage for the total quantity of plastic beverage containers, by
36 weight, that are sold, offered for sale, or distributed in Washington
37 effective for beverages except dairy milk:

38 (i) January 1, 2023, through December 31, 2025: No less than 15
39 percent postconsumer recycled content plastic by weight;

1 (ii) January 1, 2026, through December 31, 2030: No less than 25
2 percent postconsumer recycled content plastic by weight; and

3 (iii) On and after January 1, 2031: No less than 50 percent
4 postconsumer recycled content plastic by weight.

5 (b) For dairy milk:

6 (i) January 1, 2028, through December 31, 2030: No less than 15
7 percent postconsumer recycled content plastic by weight;

8 (ii) January 1, 2031, through December 31, 2035: No less than 25
9 percent postconsumer recycled content plastic by weight; and

10 (iii) On and after January 1, 2036: No less than 50 percent
11 postconsumer recycled content plastic by weight.

12 (4)(a) Beginning January 1, 2025, the department may, on an
13 annual basis, review and determine whether to adjust the minimum
14 postconsumer recycled content percentage required pursuant to
15 subsection (3) of this section. The department's review may be
16 initiated by the department or at the petition of the beverage
17 manufacturing industry not more than once annually. The department
18 may not adjust the minimum postconsumer recycled content requirements
19 above the minimum postconsumer recycled content percentages required
20 pursuant to subsection (3) of this section. In making a determination
21 pursuant to this subsection, the department must consider, at a
22 minimum, all of the following factors:

23 (i) Changes in market conditions, including supply and demand for
24 postconsumer recycled content plastics, collection rates, and bale
25 availability both domestically and globally;

26 (ii) Recycling rates;

27 (iii) The availability of recycled plastic suitable to meet the
28 minimum postconsumer recycled content requirements pursuant to
29 subsection (3) of this section, including the availability of high
30 quality recycled plastic, and food-grade recycled plastic from
31 beverage container recycling programs;

32 (iv) The capacity of recycling or processing infrastructure; and

33 (v) The progress made by beverage manufacturers in achieving the
34 goals of this section.

35 (b) The beverage manufacturing industry or a beverage
36 manufacturer may appeal the department's decision under (a) of this
37 subsection to the pollution control hearings board within 30 days of
38 the department's determination.

1 (5) A beverage manufacturer that does not achieve the
2 postconsumer recycled content requirements established under this
3 section is subject to a penalty established in section 5 of this act.

4 (6) A city, town, county, or municipal corporation may not
5 implement local recycled content requirements for plastic beverage
6 containers that are subject to minimum postconsumer recycled content
7 as required under this section.

8 (7) The department may enter into a contract for the services
9 required to implement this chapter and related duties of the
10 department.

11 NEW SECTION. **Sec. 4.** BEVERAGE MANUFACTURER REPORTING
12 REQUIREMENTS. (1)(a) Beginning April 1, 2024, beverage manufacturers,
13 individually or through a third party representing a group of
14 manufacturers, must provide an annual report to the department that
15 includes the amount of virgin plastic and the amount of postconsumer
16 recycled content by resin type used for plastic beverage containers
17 for beverages manufactured by the beverage manufacturer that are
18 sold, offered for sale, or distributed into Washington state,
19 including the total postconsumer recycled content resins as a
20 percentage of total weight. The report must be submitted in a format
21 and manner prescribed by the department. A manufacturer may submit
22 national data allocated on a per capita basis for Washington to
23 approximate the information required in this subsection if the
24 manufacturer demonstrates to the department that state level data is
25 not available or feasible to generate.

26 (b) The department must post the information reported under this
27 subsection on its website.

28 (2) A beverage manufacturer that submits information or records
29 to the department under this chapter may request that the information
30 or records be made available only for the confidential use of the
31 department, the director, or the appropriate division of the
32 department. The director of the department must give consideration to
33 the request and if this action is not detrimental to the public
34 interest and is otherwise in accordance with the policies and
35 purposes of chapter 43.21A RCW, the director must grant the request
36 for the information to remain confidential as authorized in
37 RCW 43.21A.160.

1 NEW SECTION. **Sec. 5.** PENALTIES FOR PLASTIC BEVERAGE CONTAINERS.

2 (1)(a) Beginning January 1, 2023, a beverage manufacturer that does
3 not meet the minimum postconsumer recycled content requirements
4 pursuant to section 3 of this act is subject to a penalty pursuant to
5 this section. Beginning March 1, 2024, the penalty must be collected
6 annually, if a penalty reduction has not been approved pursuant to
7 subsection (3) of this section and calculated in accordance with
8 subsection (2) of this section.

9 (b) A beverage manufacturer that is assessed a penalty pursuant
10 to this section may pay the penalty to the department in quarterly
11 installments or arrange an alternative payment schedule subject to
12 the approval of the department, not to exceed a 12-month payment plan
13 unless an extension is needed due to unforeseen circumstances, such
14 as a public health emergency, state of emergency, or natural
15 disaster.

16 (2) Beginning June 1, 2024, and annually thereafter, the
17 department shall invoice any assessed penalty for the previous
18 calendar year based on the postconsumer recycled content requirement
19 of the previous calendar year. The department shall calculate the
20 amount of the penalty based upon the amounts in pounds in the
21 aggregate of virgin plastic, postconsumer recycled content plastic,
22 and any other plastic used by the beverage manufacturer to produce
23 beverage containers sold or offered for sale in the state, in
24 accordance with the following:

25 (a)(i) The annual penalty amount assessed to a beverage
26 manufacturer must equal the product of both of the following: The
27 total pounds of plastic used multiplied by the relevant minimum
28 postconsumer recycled plastic target percentage, less the pounds of
29 total plastic multiplied by the percent of postconsumer recycled
30 plastic used; multiplied by 20 cents.

31 (ii) Example: [(Total pounds of plastic used x minimum
32 postconsumer recycled plastic target percentage) - (Total pounds of
33 plastic used x postconsumer recycled plastic percentage used)] x 20
34 cents.

35 (b) For the purposes of (a) of this subsection, both of the
36 following apply:

37 (i) The total pounds of plastic used must equal the sum of the
38 amount of virgin plastic, postconsumer recycled content plastic, and
39 any other plastic used by the beverage manufacturer, as reported
40 pursuant to section 4 of this act.

1 (ii) If the product calculated pursuant to (a) of this subsection
2 is equal to or less than zero, a penalty may not be assessed.

3 (3) (a) (i) The department shall consider granting a reduction of
4 penalties assessed pursuant to this section for the purpose of
5 meeting the minimum postconsumer recycled content requirements
6 required pursuant to section 3 of this act.

7 (ii) In determining whether to grant the reduction pursuant to
8 (a)(i) of this subsection, the department shall consider, at a
9 minimum, all of the following factors:

10 (A) Anomalous market conditions;

11 (B) Disruption in, or lack of supply of, recycled plastics; and

12 (C) Other factors that have prevented a beverage manufacturer
13 from meeting the requirements.

14 (b) In lieu of or in addition to assessing a penalty under this
15 section, the department may require a beverage manufacturer to submit
16 a corrective action plan detailing how the beverage manufacturer
17 plans to come into compliance with section 3 of this act.

18 (4) A beverage manufacturer shall pay the penalty assessed
19 pursuant to this section, as applicable, based on the information
20 reported to the department as required under section 4 of this act in
21 the form and manner prescribed by the department.

22 (5) A beverage manufacturer may appeal the penalty assessed under
23 this section to the pollution control hearings board within 30 days
24 of assessment.

25 NEW SECTION. **Sec. 6.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
26 HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS. (1)
27 Beginning January 1, 2025, household cleaning and personal care
28 product producers that offer for sale, sell, or distribute in
29 Washington household cleaning and personal care products in plastic
30 household cleaning and personal care product containers must meet
31 minimum postconsumer recycled content as required under subsection
32 (3) of this section.

33 (2) (a) On or before April 1, 2024, and annually thereafter,
34 household cleaning and personal care product producers that offer for
35 sale, sell, or distribute in Washington household cleaning and
36 personal care products in plastic household cleaning and personal
37 care product containers must register with the department
38 individually or through a third-party representative registering on

1 behalf of a group of household cleaning and personal care product
2 producers.

3 (b) After January 1, 2025, a household cleaning and personal care
4 product producer that offers for sale, sells, or distributes in
5 Washington household cleaning and personal care products in plastic
6 household cleaning and personal care product containers not
7 registered with the department either individually or through a third
8 party may not sell or supply plastic household cleaning and personal
9 care product containers in or into Washington state.

10 (c) Registration information must include a list of the household
11 cleaning and personal care product producers and the brand names of
12 the household cleaning and personal care products represented in the
13 registration submittal. Beginning April 1, 2026, registration
14 information may accompany the annual reporting required under section
15 7 of this act.

16 (d) (i) By January 31, 2024, and every January 31st thereafter,
17 the department must identify the annual costs it will incur to
18 implement this section and sections 7 and 8 of this act in the next
19 fiscal year, including rule making, and invoices of costs for
20 household cleaning and personal care product producers or their
21 third-party representatives. The department must determine an annual
22 payment by household cleaning and personal care product producers or
23 their third-party representatives that is adequate to cover, but not
24 exceed, the department's full costs to implement, administer, and
25 enforce this section and sections 7 and 8 of this act in the next
26 fiscal year, including rule making. The department must equitably
27 determine payment amounts for an individual household cleaning and
28 personal care product producer and third-party representatives.

29 (ii) The department must:

30 (A) Apply any remaining annual payment funds from the current
31 year to the annual payment for the coming year, if the collected
32 annual payment exceeds the department's costs for a given year; and

33 (B) Increase annual payments for the coming year to cover the
34 department's costs, if the collected annual payment was less than the
35 department's costs for a given year.

36 (e) By April 1, 2024, and every April 1st thereafter, household
37 cleaning and personal care product producers or their third-party
38 representatives must submit a payment as determined by the department
39 under (d) of this subsection.

1 (3) A household cleaning and personal care product producer that
2 sells, offers for sale, or distributes plastic household cleaning and
3 personal care product containers in or into Washington must meet the
4 following annual minimum postconsumer recycled content percentage for
5 the total quantity, by weight, of plastic household cleaning and
6 personal care product containers that are sold, offered for sale, or
7 distributed in Washington:

8 (a) January 1, 2025, through December 31, 2027: No less than 15
9 percent postconsumer recycled content plastic by weight;

10 (b) January 1, 2028, through December 31, 2030: No less than 25
11 percent postconsumer recycled content plastic by weight; and

12 (c) On and after January 1, 2031: No less than 50 percent
13 postconsumer recycled content plastic by weight.

14 (4)(a) Beginning January 1, 2025, the department may, on an
15 annual basis, review and determine whether to adjust the minimum
16 postconsumer recycled content percentage required pursuant to
17 subsection (3) of this section. The department's review may be
18 initiated by the department or at the petition of the household
19 cleaning and personal care product manufacturing industry not more
20 than once annually. The department may not adjust the minimum
21 postconsumer recycled content requirements above the minimum
22 postconsumer recycled content percentages required pursuant to
23 subsection (3) of this section or below a minimum of 10 percent. In
24 making a determination pursuant to this subsection, the department
25 must consider, at a minimum, all of the following factors:

26 (i) Changes in market conditions, including supply and demand for
27 postconsumer recycled content plastics, collection rates, and bale
28 availability both domestically and globally;

29 (ii) Recycling rates;

30 (iii) The availability of recycled plastic suitable to meet the
31 minimum postconsumer recycled content requirements pursuant to
32 subsection (3) of this section, including the availability of high
33 quality recycled plastic from plastic container recycling programs;

34 (iv) The capacity of recycling or processing infrastructure;

35 (v) The technical feasibility of achieving the minimum
36 postconsumer recycled content requirements pursuant to subsection (3)
37 of this section in plastic household cleaning and personal care
38 product containers that are regulated under 21 C.F.R., chapter I,
39 subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471, or 40 C.F.R.
40 Sec. 152.10; and

1 (vi) The progress made by household cleaning and personal care
2 product producers in achieving the goals of this section.

3 (b) The household cleaning and personal care product
4 manufacturing industry or a household cleaning and personal care
5 product producer may appeal the department's decision under (a) of
6 this subsection to the pollution control hearings board within 30
7 days of the department's determination.

8 (5) A household cleaning and personal care product producer that
9 does not achieve the postconsumer recycled content requirements
10 established under this section is subject to a penalty established in
11 section 8 of this act.

12 (6) A city, town, county, or municipal corporation may establish
13 local purchasing requirements that include recycled content standards
14 that exceed the minimum recycled content requirements established by
15 this chapter for plastic household cleaning and personal care product
16 containers purchased by a city, town, or municipal corporation, or
17 its contractor. A city, town, county, or municipal corporation may
18 not implement local recycled content requirements for the sale,
19 distribution, or use of plastic household cleaning and personal care
20 product containers that are subject to minimum postconsumer recycled
21 content as required under this section within its jurisdiction.

22 NEW SECTION. **Sec. 7.** HOUSEHOLD CLEANING AND PERSONAL CARE
23 PRODUCT PRODUCER REPORTING REQUIREMENTS. (1)(a) Beginning April 1,
24 2026, household cleaning and personal care product producers,
25 individually or through a third party representing a group of
26 producers, must provide an annual report submitted to the department
27 in a format and manner prescribed by the department that includes the
28 amount, by weight, of virgin plastic and the amount, by weight, of
29 postconsumer recycled content, by resin type, used by the household
30 cleaning and personal care product producer for plastic household
31 cleaning and personal care product containers sold, offered for sale,
32 or distributed into Washington state, including the total amount of
33 postconsumer recycled content resins as a percentage of total weight.
34 A producer may submit national data allocated on a per capita basis
35 for Washington to approximate the information required in this
36 subsection if the producer declares that state level data are not
37 available or feasible to generate.

38 (b) The department must post the information reported under this
39 subsection on its website.

1 (2) A household cleaning and personal care product producer that
2 submits information or records to the department under this chapter
3 may request that the information or records be made available only
4 for the confidential use of the department, the director, or the
5 appropriate division of the department. The director of the
6 department must give consideration to the request, and if this action
7 is not detrimental to the public interest and is otherwise in
8 accordance with the policies and purposes of chapter 43.21A RCW, the
9 director must grant the request for the information to remain
10 confidential as authorized in RCW 43.21A.160.

11 NEW SECTION. **Sec. 8.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
12 HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS—PENALTIES.

13 (1)(a) Beginning January 1, 2025, a household cleaning and personal
14 care product producer that does not meet the minimum postconsumer
15 recycled content requirements pursuant to section 6 of this act is
16 subject to a penalty pursuant to this section. Beginning May 1, 2026,
17 the penalty must be collected annually, if a penalty reduction has
18 not been approved pursuant to subsection (3) of this section and
19 calculated in accordance with subsection (2) of this section.

20 (b) A household cleaning and personal care product producer that
21 is assessed a penalty pursuant to this section may pay the penalty to
22 the department in quarterly installments or arrange an alternative
23 payment schedule subject to the approval of the department, not to
24 exceed a 12-month payment plan unless an extension is needed due to
25 unforeseen circumstances, such as a public health emergency, state of
26 emergency, or natural disaster.

27 (2) Beginning June 1, 2026, and annually thereafter, the
28 department shall invoice any assessed penalty for the previous
29 calendar year based on the postconsumer recycled content requirement
30 of the previous calendar year. The department shall calculate the
31 amount of the penalty based upon the amounts in pounds in the
32 aggregate of virgin plastic, postconsumer recycled content plastic,
33 and any other plastic used by the household cleaning and personal
34 care product producer to produce plastic household cleaning and
35 personal care product containers sold or offered for sale in the
36 state, in accordance with the following:

37 (a)(i) The annual penalty amount assessed to a household cleaning
38 and personal care product producer must equal the product of both of
39 the following: The total pounds of plastic used multiplied by the

1 relevant minimum postconsumer recycled plastic target percentage,
2 less the pounds of total plastic multiplied by the percent of
3 postconsumer recycled plastic used; multiplied by 20 cents.

4 (ii) Example: [(Total pounds of plastic used x minimum
5 postconsumer recycled plastic target percentage) - (Total pounds of
6 plastic used x postconsumer recycled plastic percentage used)] x 20
7 cents.

8 (b) For the purposes of (a) of this subsection, both of the
9 following apply:

10 (i) The total pounds of plastic used must equal the sum of the
11 amount of virgin plastic, postconsumer recycled content plastic, and
12 any other plastic used by the household cleaning and personal care
13 product producer, as reported pursuant to section 7 of this act.

14 (ii) If the product calculated pursuant to (a) of this subsection
15 is equal to or less than zero, a penalty may not be assessed.

16 (3) (a) (i) The department shall consider granting a reduction of
17 penalties assessed pursuant to this section for the purpose of
18 meeting the minimum postconsumer recycled content requirements
19 required pursuant to section 6 of this act.

20 (ii) In determining whether to grant the reduction pursuant to
21 (a)(i) of this subsection, the department shall consider, at a
22 minimum, all of the following factors:

23 (A) Anomalous market conditions;

24 (B) Disruption in, or lack of supply of, recycled plastics; and

25 (C) Other factors that have prevented a household cleaning and
26 personal care product producer from meeting the requirements.

27 (b) In lieu of or in addition to assessing a penalty under this
28 section, the department may require a household cleaning and personal
29 care product producer to submit a corrective action plan detailing
30 how the household cleaning and personal care product producer plans
31 to come into compliance with section 6 of this act.

32 (4) A household cleaning and personal care product producer shall
33 pay the penalty assessed pursuant to this section, as applicable,
34 based on the information reported to the department as required under
35 section 7 of this act in the form and manner prescribed by the
36 department.

37 NEW SECTION. **Sec. 9.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
38 HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS—DEPARTMENT
39 DUTIES. (1) The department may conduct audits and investigations for

1 the purpose of ensuring compliance with section 6 of this act based
2 on the information reported under section 7 of this act.

3 (2) The department shall annually publish a list of registered
4 producers and associated brand names, their compliance status, and
5 other information the department deems appropriate on the
6 department's website.

7 NEW SECTION. **Sec. 10.** POSTCONSUMER RECYCLED CONTENT IN TRASH
8 BAGS. (1)(a) Beginning January 1, 2023, plastic trash bag producers
9 that offer for sale, sell, or distribute in Washington plastic trash
10 bags must meet minimum postconsumer recycled content as required
11 under subsection (3) of this section.

12 (b) Beginning January 1, 2023, plastic trash bag producers shall
13 label each container of plastic trash bags sold, offered for sale, or
14 distributed in Washington with:

15 (i) The name of the producer and the city, state, and country
16 where the producer is located, which may be designated as the
17 location of the producer's corporate headquarters; or

18 (ii) A uniform resource locator or quick response code to an
19 internet website that contains the information required pursuant to
20 (b)(i) of this subsection.

21 (c) The provisions of (a) of this subsection shall not apply to a
22 bag that is designed and manufactured to hold, store, or transport
23 dangerous waste or biomedical waste. For the purposes of this
24 subsection, "dangerous waste" means any waste defined as dangerous
25 waste under RCW 70A.300.010; and "biomedical waste" means any waste
26 defined as that term under RCW 70A.228.010.

27 (2)(a) On or before April 1, 2022, and annually thereafter,
28 plastic trash bag producers that offer for sale, sell, or distribute
29 in Washington plastic trash bags must register with the department
30 individually or through a third-party representative registering on
31 behalf of a group of plastic trash bag producers.

32 (b) After January 1, 2023, a plastic trash bag producer that
33 offers for sale, sells, or distributes in Washington plastic trash
34 bags not registered with the department either individually or
35 through a third party may not sell or supply plastic trash bags in or
36 into Washington state.

37 (c) Registration information must include a list of the plastic
38 trash bag producers and the brand names of the plastic trash bags
39 represented in the registration submittal. Beginning April 1, 2024,

1 registration information may accompany the annual reporting required
2 under section 11 of this act.

3 (d) (i) By January 31, 2022, and every January 31st thereafter,
4 the department must identify the annual costs it will incur to
5 implement this section and sections 11 and 12 of this act in the next
6 fiscal year, including rule making, and invoices of costs for plastic
7 trash bag producers or their third-party representatives. The
8 department must determine an annual payment by plastic trash bag
9 producers or their third-party representatives that is adequate to
10 cover, but not exceed, the department's full costs to implement,
11 administer, and enforce this chapter in the next fiscal year,
12 including rule making. The department must equitably determine
13 payment amounts for an individual plastic trash bag producer and
14 third-party representatives.

15 (ii) The department must:

16 (A) Apply any remaining annual payment funds from the current
17 year to the annual payment for the coming year, if the collected
18 annual payment exceeds the department's costs for a given year; and

19 (B) Increase annual payments for the coming year to cover the
20 department's costs, if the collected annual payment was less than the
21 department's costs for a given year.

22 (e) By April 1, 2022, and every April 1st thereafter, plastic
23 trash bag producers or their third-party representatives must submit
24 a payment as determined by the department under (d) of this
25 subsection.

26 (3) A plastic trash bag producer that sells, offers for sale, or
27 distributes plastic trash bags in or into Washington must meet the
28 following annual minimum postconsumer recycled content percentage on
29 average for the total quantity, by weight, of plastic trash bags that
30 are sold, offered for sale, or distributed in Washington:

31 (a) January 1, 2023, through December 31, 2024: No less than 10
32 percent postconsumer recycled content plastic by weight;

33 (b) January 1, 2025, through December 31, 2026: No less than 15
34 percent postconsumer recycled content plastic by weight; and

35 (c) On and after January 1, 2027: No less than 20 percent
36 postconsumer recycled content plastic by weight.

37 (4) (a) Beginning January 1, 2024, the department may, on an
38 annual basis, review and determine whether to adjust the minimum
39 postconsumer recycled content percentage required pursuant to
40 subsection (3) of this section. The department's review may be

1 initiated by the department or at the petition of the plastic trash
2 bag manufacturing industry not more than once annually. The
3 department may not adjust the minimum postconsumer recycled content
4 requirements above the minimum postconsumer recycled content
5 percentages required pursuant to subsection (3) of this section or
6 below the minimum percentage required in subsection (3)(a) of this
7 section. In making a determination pursuant to this subsection, the
8 department must consider, at a minimum, all of the following factors:

9 (i) Changes in market conditions, including supply and demand for
10 postconsumer recycled content plastics, collection rates, and bale
11 availability both domestically and globally;

12 (ii) Recycling rates;

13 (iii) The availability of recycled plastic suitable to meet the
14 minimum postconsumer recycled content requirements pursuant to
15 subsection (3) of this section, including the availability of high
16 quality recycled plastic from flexible plastic recycling programs;

17 (iv) The capacity of recycling or processing infrastructure; and

18 (v) The progress made by plastic trash bag producers in achieving
19 the goals of this section.

20 (b) The plastic trash bag manufacturing industry or a plastic
21 trash bag producer may appeal the department's decision under (a) of
22 this subsection to the pollution control hearings board within 30
23 days of the department's determination.

24 (5) A plastic trash bag producer that does not achieve the
25 postconsumer recycled content requirements established under this
26 section is subject to a penalty established in section 12 of this
27 act.

28 (6) A city, town, county, or municipal corporation may establish
29 local purchasing requirements that include recycled content standards
30 that exceed the minimum recycled content requirements established by
31 this chapter for plastic trash bags purchased by a city, town, or
32 municipal corporation, or its contractor. A city, town, county, or
33 municipal corporation may not implement local recycled content
34 requirements for the sale, distribution, or use of plastic trash bags
35 that are subject to minimum postconsumer recycled content as required
36 under this section within its jurisdiction.

37 (7) The department may enter into a contract for the services
38 required to implement this chapter and related duties of the
39 department.

1 NEW SECTION. **Sec. 11.** PLASTIC TRASH BAG PRODUCER REPORTING
2 REQUIREMENTS. (1)(a) Beginning April 1, 2024, plastic trash bag
3 producers, individually or through a third party representing a group
4 of producers, must provide an annual report submitted to the
5 department in a format and manner prescribed by the department, that
6 includes:

7 (i) The amount of virgin plastic and the amount of postconsumer
8 recycled content by resin type used for plastic trash bags
9 manufactured by the plastic trash bag producer that are sold, offered
10 for sale, or distributed into Washington state, including the total
11 postconsumer recycled content resins as a percentage of total weight.
12 A producer may submit national data allocated on a per capita basis
13 for Washington to approximate the information required in this
14 subsection if the producer declares that state level data is not
15 available or feasible to generate.

16 (ii) Proof of certification conducted by a third-party
17 certification entity of the recycled content for each type of plastic
18 trash bag containing postconsumer recycled content offered for sale,
19 sold, or distributed in Washington.

20 (b) The department must post the information reported under this
21 subsection on its website.

22 (2) A plastic trash bag producer that submits information or
23 records to the department under this chapter may request that the
24 information or records be made available only for the confidential
25 use of the department, the director, or the appropriate division of
26 the department. The director of the department must give
27 consideration to the request, and if this action is not detrimental
28 to the public interest and is otherwise in accordance with the
29 policies and purposes of chapter 43.21A RCW, the director must grant
30 the request for the information to remain confidential as authorized
31 in RCW 43.21A.160.

32 NEW SECTION. **Sec. 12.** POSTCONSUMER RECYCLED CONTENT IN TRASH
33 BAGS—PENALTIES. (1)(a) Beginning January 1, 2023, a plastic trash bag
34 producer that does not meet the minimum postconsumer recycled content
35 requirements pursuant to section 10 of this act is subject to a
36 penalty pursuant to this section. Beginning March 1, 2024, the
37 penalty must be collected annually, if a penalty reduction has not
38 been approved pursuant to subsection (3) of this section and
39 calculated in accordance with subsection (2) of this section.

1 (b) A plastic trash bag producer that is assessed a penalty
2 pursuant to this section may pay the penalty to the department in
3 quarterly installments or arrange an alternative payment schedule
4 subject to the approval of the department, not to exceed a 12-month
5 payment plan unless an extension is needed due to unforeseen
6 circumstances, such as a public health emergency, state of emergency,
7 or natural disaster.

8 (2) Beginning June 1, 2024, and annually thereafter, the
9 department shall invoice any assessed penalty for the previous
10 calendar year based on the postconsumer recycled content requirement
11 of the previous calendar year. The department shall calculate the
12 amount of the penalty based upon the amounts in pounds in the
13 aggregate of virgin plastic, postconsumer recycled content plastic,
14 and any other plastic used by the plastic trash bag producer to
15 produce plastic trash bags sold or offered for sale in the state, in
16 accordance with the following:

17 (a) (i) The annual penalty amount assessed to a plastic trash bag
18 producer must equal the product of both of the following: The total
19 pounds of plastic used multiplied by the relevant minimum
20 postconsumer recycled plastic target percentage, less the pounds of
21 total plastic multiplied by the percent of postconsumer recycled
22 plastic used; multiplied by 20 cents.

23 (ii) Example: [(Total pounds of plastic used x minimum
24 postconsumer recycled plastic target percentage) - (Total pounds of
25 plastic used x postconsumer recycled plastic percentage used)] x 20
26 cents.

27 (b) For the purposes of (a) of this subsection, both of the
28 following apply:

29 (i) The total pounds of plastic used must equal the sum of the
30 amount of virgin plastic, postconsumer recycled content plastic, and
31 any other plastic used by the plastic trash bag producer, as reported
32 pursuant to section 11 of this act.

33 (ii) If the product calculated pursuant to (a) of this subsection
34 is equal to or less than zero, a penalty may not be assessed.

35 (3) (a) (i) The department shall consider granting a reduction of
36 penalties assessed pursuant to this section for the purpose of
37 meeting the minimum postconsumer recycled content requirements
38 required pursuant to section 10 of this act.

1 (ii) In determining whether to grant the reduction pursuant to
2 (a)(i) of this subsection, the department shall consider, at a
3 minimum, all of the following factors:

4 (A) Anomalous market conditions;

5 (B) Disruption in, or lack of supply of, recycled plastics; and

6 (C) Other factors that have prevented a plastic trash bag
7 producer from meeting the requirements.

8 (b) In lieu of or in addition to assessing a penalty under this
9 section, the department may require a plastic trash bag producer to
10 submit a corrective action plan detailing how the plastic trash bag
11 producer plans to come into compliance with section 10 of this act.

12 (4) A plastic trash bag producer shall pay the penalty assessed
13 pursuant to this section, as applicable, based on the information
14 reported to the department as required under section 11 of this act
15 in the form and manner prescribed by the department.

16 NEW SECTION. **Sec. 13.** POSTCONSUMER RECYCLED CONTENT IN TRASH
17 BAGS—DEPARTMENT DUTIES. (1) The department may conduct audits and
18 investigations for the purpose of ensuring compliance with section 10
19 of this act based on the information reported under section 11 of
20 this act.

21 (2) The department shall annually publish a list of registered
22 producers and associated brand names, their compliance status, and
23 other information the department deems appropriate on the
24 department's website.

25 NEW SECTION. **Sec. 14.** A new section is added to chapter 39.26
26 RCW to read as follows:

27 POSTCONSUMER RECYCLED CONTENT IN PLASTIC TRASH BAGS—PURCHASING
28 PRIORITY. (1) Beginning January 1, 2023, all state agencies shall
29 purchase plastic trash bags manufactured by plastic trash bag
30 producers that comply with the minimum recycled content requirements
31 pursuant to section 10 of this act.

32 (2) By June 1, 2022, the department of ecology shall provide to
33 the department a list of the plastic trash bag producer brands that
34 comply with the minimum recycled content requirements pursuant to
35 section 10 of this act, in order for state agencies to purchase
36 compliant products, updated annually.

1 NEW SECTION. **Sec. 15.** EXPANDED POLYSTYRENE PROHIBITIONS. (1)

2 Beginning June 1, 2023, the sale and distribution of the following
3 expanded polystyrene products in or into the state is prohibited:

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

10 (b) Food service products that include food containers, plates,
11 clam shell-style containers, and hot and cold beverage cups. For the
12 purposes of this subsection (1)(b), food service products do not
13 include: Packaging for raw, uncooked, or butchered meat, fish,
14 poultry, or seafood, vegetables, fruit, or egg cartons; and

15 (c) Void filling packaging products, which means loose fill
16 packaging material, also referred to as packing peanuts.

17 (2)(a) The department must provide technical assistance and
18 guidance to manufacturers of prohibited expanded polystyrene
19 products, as requested. For manufacturers out of compliance with the
20 requirements of this section, the department shall provide written
21 notification and offer information to manufacturers that sell
22 prohibited expanded polystyrene products who are in violation of this
23 section. For the purposes of this section, written notification
24 serves as notice of the violation. The department must issue at least
25 two notices of violation by certified mail prior to assessing a
26 penalty.

27 (b) A manufacturer of products in violation of this section is
28 subject to a civil penalty for each violation in an amount not to
29 exceed:

30 (i) \$250 if it is the manufacturer's first penalty; and

31 (ii) \$1,000 if the manufacturer has previously been issued a
32 civil penalty under this section.

33 (c) Penalties collected under this section must be deposited in
34 the model toxics control operating account created in RCW
35 70A.305.180.

36 (d) Penalties issued under this section are appealable to the
37 pollution control hearings board established in chapter 43.21B RCW.

38 (3) A city, town, county, or municipal corporation may not
39 implement a local ordinance restricting products prohibited under
40 subsection (1) of this section unless the ordinance was filed by

1 April 1, 2021, and enacted by June 1, 2021. An ordinance restricting
2 products specified under subsection (1) of this section that was not
3 enacted as of June 1, 2021, is preempted by this section.

4 (4) For the purposes of this section, "manufacturer" includes any
5 person, firm, association, partnership, corporation, governmental
6 entity, organization, or joint venture that:

7 (a) Produces the products subject to restrictions in subsection
8 (1) of this section; or

9 (b) Is an importer or domestic distributor of a product subject
10 to restrictions in subsection (1) of this section sold or offered for
11 sale in or into the state.

12 NEW SECTION. **Sec. 16.** OPTIONAL SERVICEWARE. (1) Beginning
13 January 1, 2022:

14 (a) Except as provided in (c) of this subsection, a food service
15 business at which the opportunity is provided for the on-site
16 consumption of food or beverages may provide the following types of
17 single-use food service products only upon request:

- 18 (i) Utensils;
- 19 (ii) Straws;
- 20 (iii) Condiment packaging; and
- 21 (iv) Beverage cup lids.

22 (b) Except as provided in (c) of this subsection, the following
23 food service businesses may provide types of single-use food service
24 products identified in (a) of this subsection only after affirming
25 that the customer wants the single-use food service products:

- 26 (i) A food service business at which no opportunity is provided
27 for the on-site consumption of food or beverages; or
- 28 (ii) A food service business serving food or beverages to
29 customers via a drive-through.

30 (c) A food service business may provide beverage cup lids without
31 request for:

- 32 (i) Hot beverages;
- 33 (ii) Beverages provided through delivery service or curbside
34 pickup; and
- 35 (iii) Beverages served to customers via a drive-through.

36 (2) Nothing in this section prohibits a food service business
37 from making utensils, straws, condiments, and beverage cup lids
38 available to customers using cylinders, bins, dispensers, containers,
39 or other means of allowing for single-use utensils, straws,

1 condiments, and beverage cup lids to be obtained at the affirmative
2 volition of the customer. Utensils provided by a food service
3 business for use by customers may not be bundled or packaged in
4 plastic in such a way that a customer is unable to take only the type
5 of single-use utensil or utensils desired without also taking a
6 different type or types of utensil.

7 (3) (a) The department may issue a civil penalty of no less than
8 \$150 per day and no more than \$2,000 per day to the owner or operator
9 of a food service business for each day single-use food service
10 products are provided in violation of this section.

11 (b) The department must issue at least two notices of violation
12 by certified mail prior to assessing a penalty.

13 (c) Penalties collected under this section must be deposited in
14 the model toxics control operating account created in RCW
15 70A.305.180.

16 (d) A food service business may appeal penalties assessed under
17 this subsection to the pollution control hearings board within 30
18 days of assessment.

19 (4) Beginning July 1, 2021, a city, town, county, or municipal
20 corporation may not enact an ordinance to reduce pollution from
21 single-use food service products by requiring a request of single-use
22 food service products by the customer of the food service business or
23 other retail establishment.

24 NEW SECTION. **Sec. 17.** DEPARTMENT DUTIES. (1) The department may
25 conduct audits and investigations for the purpose of ensuring
26 compliance with sections 3, 6, and 10 of this act based on the
27 information reported under sections 4, 7, and 11 of this act.

28 (2) To assist with the requirements specified under sections 15
29 and 16 of this act, the department:

30 (a) Must prepare and post on its website information regarding
31 the prohibitions on the sale and distribution of expanded polystyrene
32 products as specified under section 15 of this act and optional
33 serviceware under section 16 of this act;

34 (b) For education and outreach to help implement sections 15 and
35 16 of this act, may develop culturally appropriate and translated
36 educational materials and resources for the state's diverse ethnic
37 populations from existing materials used by local jurisdictions and
38 other states.

1 (3) The department may adopt rules as necessary to administer,
2 implement, and enforce this chapter.

3 NEW SECTION. **Sec. 18.** RECYCLING ENHANCEMENT ACCOUNT. The
4 recycling enhancement account is created in the custody of the state
5 treasurer. All penalties collected by the department pursuant to
6 sections 5, 8, and 12 of this act must be deposited in the account.
7 Only the director of the department or the director's designee may
8 authorize expenditures from the account. The account is subject to
9 the allotment procedures under chapter 43.88 RCW, but an
10 appropriation is not required for expenditures. Expenditures from the
11 account may be used by the department only for providing grants to
12 local governments for the purpose of supporting local solid waste and
13 financial assistance programs.

14 NEW SECTION. **Sec. 19.** RECYCLED CONTENT ACCOUNT. The recycled
15 content account is created in the custody of the state treasurer. All
16 receipts received by the department under sections 3, 6, and 10 of
17 this act must be deposited in the account. Only the director of the
18 department or the director's designee may authorize expenditures from
19 the account. The account is subject to the allotment procedures under
20 chapter 43.88 RCW, but an appropriation is not required for
21 expenditures. Expenditures from the account may be used by the
22 department only for implementing, administering, and enforcing the
23 requirements of sections 3 through 13 of this act.

24 NEW SECTION. **Sec. 20.** MARKET STUDY. (1) Subject to the
25 availability of amounts appropriated for this specific purpose prior
26 to January 1, 2028, the department shall contract with a research
27 university or an independent third-party consultant to study the
28 polyethylene terephthalate and high-density polyethylene markets for
29 all of the following:

30 (a) Analyzing market conditions and opportunities in the state's
31 recycling industry for meeting the minimum postconsumer recycled
32 content requirements for plastic beverage containers pursuant to
33 sections 3 and 4 of this act;

34 (b) Determining the data needs and tracking opportunities to
35 increase the transparency and support of a more effective, fact-based
36 public understanding of the recycling industry; and

1 (c) Recommending further policy modifications and measures to
2 achieve the state's recycling targets with the least cost and optimal
3 efficiency.

4 (2) If funding is provided pursuant to subsection (1) of this
5 section and the department undertakes the study, the study must be
6 completed by May 1, 2029.

7 **Sec. 21.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035
8 are each reenacted and amended to read as follows:

9 (1) The hearings board shall only have jurisdiction to hear and
10 decide appeals from the following decisions of the department, the
11 director, local conservation districts, the air pollution control
12 boards or authorities as established pursuant to chapter 70A.15 RCW,
13 local health departments, the department of natural resources, the
14 department of fish and wildlife, the parks and recreation commission,
15 and authorized public entities described in chapter 79.100 RCW:

16 (a) Civil penalties imposed pursuant to RCW 18.104.155,
17 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
18 70A.515.060, sections 15 and 16 of this act, 76.09.170, 77.55.440,
19 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
20 90.56.330, and 90.64.102.

21 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
22 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
23 sections 3, 6, and 10 of this act, 86.16.020, 88.46.070, 90.14.130,
24 90.46.250, 90.48.120, and 90.56.330.

25 (c) Except as provided in RCW 90.03.210(2), the issuance,
26 modification, or termination of any permit, certificate, or license
27 by the department or any air authority in the exercise of its
28 jurisdiction, including the issuance or termination of a waste
29 disposal permit, the denial of an application for a waste disposal
30 permit, the modification of the conditions or the terms of a waste
31 disposal permit, or a decision to approve or deny an application for
32 a solid waste permit exemption under RCW 70A.205.260.

33 (d) Decisions of local health departments regarding the grant or
34 denial of solid waste permits pursuant to chapter 70A.205 RCW.

35 (e) Decisions of local health departments regarding the issuance
36 and enforcement of permits to use or dispose of biosolids under RCW
37 70A.226.090.

38 (f) Decisions of the department regarding waste-derived
39 fertilizer or micronutrient fertilizer under RCW 15.54.820, and

1 decisions of the department regarding waste-derived soil amendments
2 under RCW 70A.205.145.

3 (g) Decisions of local conservation districts related to the
4 denial of approval or denial of certification of a dairy nutrient
5 management plan; conditions contained in a plan; application of any
6 dairy nutrient management practices, standards, methods, and
7 technologies to a particular dairy farm; and failure to adhere to the
8 plan review and approval timelines in RCW 90.64.026.

9 (h) Any other decision by the department or an air authority
10 which pursuant to law must be decided as an adjudicative proceeding
11 under chapter 34.05 RCW.

12 (i) Decisions of the department of natural resources, the
13 department of fish and wildlife, and the department that are
14 reviewable under chapter 76.09 RCW, and the department of natural
15 resources' appeals of county, city, or town objections under RCW
16 76.09.050(7).

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

19 (k) Decisions of the department of fish and wildlife to issue,
20 deny, condition, or modify a hydraulic project approval permit under
21 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
22 comply, to issue a civil penalty, or to issue a notice of intent to
23 disapprove applications.

24 (l) Decisions of the department of natural resources that are
25 reviewable under RCW 78.44.270.

26 (m) Decisions of an authorized public entity under RCW 79.100.010
27 to take temporary possession or custody of a vessel or to contest the
28 amount of reimbursement owed that are reviewable by the hearings
29 board under RCW 79.100.120.

30 (n) Decisions of the department of ecology that are appealable
31 under sections 3, 5, 6, 8, 10, and 12 of this act, to assess
32 penalties and to set recycled minimum postconsumer content for
33 plastic beverage containers.

34 (2) The following hearings shall not be conducted by the hearings
35 board:

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

38 (b) Hearings conducted by the department pursuant to RCW
39 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
40 70A.15.3110, and 90.44.180.

1 (c) Appeals of decisions by the department under RCW 90.03.110
2 and 90.44.220.

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

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

8 **Sec. 22.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to
9 read as follows:

10 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
11 70A.205.280, 70A.300.090, 70A.20.050, sections 15 and 16 of this act,
12 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
13 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in
14 writing, either by certified mail with return receipt requested or by
15 personal service, to the person incurring the penalty from the
16 department or the local air authority, describing the violation with
17 reasonable particularity. For penalties issued by local air
18 authorities, within thirty days after the notice is received, the
19 person incurring the penalty may apply in writing to the authority
20 for the remission or mitigation of the penalty. Upon receipt of the
21 application, the authority may remit or mitigate the penalty upon
22 whatever terms the authority in its discretion deems proper. The
23 authority may ascertain the facts regarding all such applications in
24 such reasonable manner and under such rules as it may deem proper and
25 shall remit or mitigate the penalty only upon a demonstration of
26 extraordinary circumstances such as the presence of information or
27 factors not considered in setting the original penalty.

28 (2) Any penalty imposed under this section may be appealed to the
29 pollution control hearings board in accordance with this chapter if
30 the appeal is filed with the hearings board and served on the
31 department or authority thirty days after the date of receipt by the
32 person penalized of the notice imposing the penalty or thirty days
33 after the date of receipt of the notice of disposition by a local air
34 authority of the application for relief from penalty.

35 (3) A penalty shall become due and payable on the later of:
36 (a) Thirty days after receipt of the notice imposing the penalty;
37 (b) Thirty days after receipt of the notice of disposition by a
38 local air authority on application for relief from penalty, if such
39 an application is made; or

1 (c) Thirty days after receipt of the notice of decision of the
2 hearings board if the penalty is appealed.

3 (4) If the amount of any penalty is not paid to the department
4 within thirty days after it becomes due and payable, the attorney
5 general, upon request of the department, shall bring an action in the
6 name of the state of Washington in the superior court of Thurston
7 county, or of any county in which the violator does business, to
8 recover the penalty. If the amount of the penalty is not paid to the
9 authority within thirty days after it becomes due and payable, the
10 authority may bring an action to recover the penalty in the superior
11 court of the county of the authority's main office or of any county
12 in which the violator does business. In these actions, the procedures
13 and rules of evidence shall be the same as in an ordinary civil
14 action.

15 (5) All penalties recovered shall be paid into the state treasury
16 and credited to the general fund except those penalties imposed
17 pursuant to RCW 18.104.155, which shall be credited to the
18 reclamation account as provided in RCW 18.104.155(7), RCW
19 70A.15.3160, the disposition of which shall be governed by that
20 provision, RCW 70A.300.090, which shall be credited to the model
21 toxics control operating account created in RCW 70A.305.180, RCW
22 90.56.330, which shall be credited to the coastal protection fund
23 created by RCW 90.48.390, and RCW 70A.355.070, which shall be
24 credited to the underground storage tank account created by RCW
25 70A.355.090.

26 **Sec. 23.** RCW 70A.220.020 and 2020 c 20 s 1228 are each amended
27 to read as follows:

28 ~~((1) The provisions of this section and any rules adopted under
29 this section shall be interpreted to conform with nationwide plastics
30 industry standards.~~

31 ~~(2)) Except as provided in RCW 70A.220.030(2), after January 1,
32 1992, no person may distribute, sell, or offer for sale in this state
33 a plastic bottle or rigid plastic container unless the container is
34 labeled with a code identifying the appropriate resin type used to
35 produce the structure of the container. ((The code shall consist of a
36 number placed within three triangulated arrows and letters placed
37 below the triangle of arrows. The triangulated arrows shall be
38 equilateral, formed by three arrows with the apex of each point of
39 the triangle at the midpoint of each arrow, rounded with a short~~

1 ~~radius. The pointer (arrowhead) of each arrow shall be at the~~
2 ~~midpoint of each side of the triangle with a short gap separating the~~
3 ~~pointer from the base of the adjacent arrow. The triangle, formed by~~
4 ~~the three arrows curved at their midpoints shall depict a clockwise~~
5 ~~path around the code number.)~~) The numbers and letters used shall be
6 as follows:

- 7 (a) 1.= PETE (polyethylene terephthalate)
- 8 (b) 2.= HDPE (high density polyethylene)
- 9 (c) 3.= V (vinyl) or PVC (polyvinyl chloride)
- 10 (d) 4.= LDPE (low density polyethylene)
- 11 (e) 5.= PP (polypropylene)
- 12 (f) 6.= PS (polystyrene)
- 13 (g) 7.= OTHER

14 NEW SECTION. **Sec. 24.** Sections 2 through 13 and 15 through 20
15 of this act constitute a new chapter in Title 70A RCW.

16 NEW SECTION. **Sec. 25.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected."

2SSB 5022 - S AMD 330
By Senator Das

ADOPTED 03/02/2021

20 On page 1, line 3 of the title, after "and" strike the remainder
21 of the title and insert "addressing plastic packaging; amending RCW
22 43.21B.300 and 70A.220.020; reenacting and amending RCW 43.21B.110;
23 adding a new section to chapter 39.26 RCW; adding a new chapter to
24 Title 70A RCW; creating a new section; and prescribing penalties."

EFFECT: Adds minimum recycled content requirements for plastic household cleaning and personal care product containers and plastic trash bags. Creates a state purchasing preference for plastic trash bags that comply with the minimum recycled content requirements. Changes references to "fees" for plastic beverage manufacturers unable to meet the requirements to "penalties." Renames the Recycling Enhancement Fee Account to the Recycling Enhancement Account. Directs Recycling Enhancement Account funds towards grants to local governments for the purpose of supporting local solid waste and financial assistance programs, rather than the Recycling Development

Center. Provides that the Recycling Enhancement Account and the Recycled Content Account are created in the custody of the state treasurer. Exempts medical food from the definition of "beverage." Removes the requirement that plastic bottle and plastic container plastic resin codes consist of three triangulated arrows. Adds PVC (polyvinyl chloride) to the meaning of resin code number 3. Amends the title to an act relating to managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and addressing plastic packaging. Removes the penalty of perjury as applied to beverage manufacturer reporting. Specifies that the definition of plastic beverage container applies to bottles or containers comprised solely of one or multiple plastic resins.

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