

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1085

68th Legislature
2023 Regular Session

Passed by the House February 28, 2023
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate April 8, 2023
Yeas 37 Nays 11

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1085** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1085

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By House Environment & Energy (originally sponsored by Representatives Mena, Bateman, Reed, Fitzgibbon, Ramel, Peterson, Pollet, Berry, Walen, Doglio, Macri, Simmons, Thai, Cortes, Kloba, and Ormsby)

READ FIRST TIME 01/30/23.

1 AN ACT Relating to reducing plastic pollution; amending RCW
2 43.21B.110 and 43.21B.300; adding a new section to chapter 19.27 RCW;
3 adding new sections to chapter 70A.245 RCW; creating new sections;
4 and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
7 public interest to reduce unnecessary plastic waste and sources of
8 plastic pollution in the environment, especially where less-polluting
9 and more sustainable alternatives to plastic products and packaging
10 are available. In this act, the legislature intends to reduce three
11 such sources of plastic and associated pollution:

12 (1) Single-use plastic water bottles, which frequently end up as
13 litter;

14 (2) The small plastic containers, wrappers, and packaging for
15 personal health and beauty products, which are still often provided
16 in lodging establishments but easily substituted by bulk dispensers
17 and which are difficult to recycle in current systems; and

18 (3) Certain thin-walled or soft-shell floating extruded or
19 expanded plastic foam structures, which frequently degrade in the
20 environment and contribute to small and microplastic pollution of
21 marine and shoreline environments.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27
2 RCW to read as follows:

3 (1) In any construction subject to the requirements of this
4 chapter in which a drinking fountain is required under the
5 international building code as amended and adopted by the building
6 code council, the rules adopted by the building code council must
7 also require the provision of a bottle filling station, or a combined
8 bottle filling station and drinking fountain for each drinking
9 fountain that is required.

10 (2) The rules required under this section must take effect and be
11 implemented by July 1, 2026, and may be periodically updated
12 thereafter.

13 (3) For the purposes of this section, "bottle filling station"
14 means a plumbing fixture connected to the potable water distribution
15 system and sanitary drainage system that is designed and intended for
16 filling personal use drinking water bottles or containers not less
17 than 10 inches (254 millimeters) in height. A bottle filling station
18 may be separate from or integral to a drinking fountain and may
19 incorporate a water filter and a cooling system for chilling the
20 drinking water.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 70A.245
22 RCW to read as follows:

23 (1) Beginning January 1, 2024, it is prohibited to sell,
24 distribute, install, or arrange for the installation of in or into
25 Washington state:

26 (a) Overwater structures containing expanded or extruded plastic
27 foam that is not fully enclosed and contained in a shell made of
28 plastic with a minimum thickness of 0.15 inches, concrete, aluminum,
29 or steel; and

30 (b) Blocks or floats containing or comprised of expanded or
31 extruded plastic foam that are not fully enclosed and contained in a
32 shell made of plastic with a minimum thickness of 0.15 inches,
33 concrete, aluminum, or steel, and that are intended for use in or in
34 conjunction with overwater structures.

35 (2)(a) The department may adopt rules to implement, administer,
36 and enforce this section.

37 (b) A person in violation of this section is subject to a civil
38 penalty for each violation in an amount not to exceed \$10,000.

1 (c) Penalties collected under this section must be deposited in
2 the model toxics control operating account created in RCW
3 70A.305.180.

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

6 (3) For the purposes of this section, overwater structures do not
7 include floating homes or floating on-water residences, as those
8 terms are defined in RCW 90.58.270, but do include docks, floats,
9 walkways, or other accessory overwater structures associated with
10 floating homes or floating on-water residences.

11 (4) Nothing in this section applies to any dock sold,
12 distributed, or installed prior to January 1, 2024.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 70A.245
14 RCW to read as follows:

15 (1)(a) A lodging establishment may not provide a personal health
16 or beauty product in a small plastic personal health or beauty
17 product container, a plastic wrapper, or any other single-use plastic
18 packaging to a person staying in a lodging unit or within bathrooms
19 shared by the public or guests. A lodging establishment may make
20 products restricted under this subsection available to a person upon
21 request.

22 (b) The requirements of (a) of this subsection apply beginning
23 January 1, 2027, for lodging establishments with 50 or more lodging
24 units, and beginning January 1, 2028, for lodging establishments with
25 less than 50 lodging units.

26 (c)(i) Nothing in this subsection restricts the use of plastic
27 refillable bulk health or beauty product dispensers.

28 (ii) Nothing in this subsection:

29 (A) Restricts the use of single-use health or beauty product
30 containers, wrappers, or packaging that are not made with plastic; or

31 (B) Requires the use of refillable bulk health or beauty product
32 dispensers.

33 (2)(a) The department must issue at least one notice of violation
34 by certified mail to the owner or operator of a lodging establishment
35 prior to assessing a penalty under (b) of this subsection.

36 (b) For the first and subsequent penalized violations by the
37 owner or operator of a lodging establishment, the department may
38 issue a civil penalty of up to \$500 for each day the lodging
39 establishment provides personal health or beauty products in

1 violation of this section. The department may not issue penalties to
2 a lodging establishment in excess of \$2,000 annually.

3 (c) Penalties collected under this section must be deposited in
4 the model toxics control operating account created in RCW
5 70A.305.180.

6 (d) A lodging establishment may appeal penalties assessed under
7 this subsection to the pollution control hearings board created in
8 chapter 43.21B RCW within 30 days of assessment.

9 (3)(a) The department may adopt rules to implement, administer,
10 and enforce this section.

11 (b) The enforcement of this section must be primarily based on
12 complaints filed with the department. The department must establish a
13 forum for the filing of complaints, and any person may file
14 complaints with the department using the forum. The forum established
15 by the department may include a complaint form on the department's
16 website, a telephone hotline, or a public outreach strategy relying
17 upon electronic social media to receive complaints that allege
18 violations. The department must provide a website with education and
19 outreach resources that provides information about the requirements
20 of this section to lodging establishments, consumers, and other
21 interested individuals.

22 (4) On and after July 23, 2023, a city, town, or county may not
23 enforce an ordinance, resolution, regulation, or rule relating to
24 personal health or beauty products in single-use plastic bottles,
25 wrappers, or packaging provided at lodging establishments.

26 (5) The definitions in this subsection apply throughout this
27 section unless the context clearly requires otherwise.

28 (a)(i) "Lodging establishment" means an establishment that
29 contains one or more sleeping room accommodations that are rented or
30 otherwise provided to the public including, but not limited to, a
31 hotel, motel, resort, bed and breakfast, inn, timeshare property,
32 short-term rental, or vacation rental.

33 (ii) "Lodging establishment" does not include a hospital, nursing
34 home, residential retirement community, prison, jail, homeless
35 shelter, boarding school, worker housing, or long-term rental.

36 (b) "Lodging unit" means one self-contained unit of a lodging
37 establishment including, but not limited to, self-contained units
38 designated by number, letter, or some other method of identification.

39 (c) "Personal health or beauty product" means:

1 (i) Shampoo, hair conditioner, bath soap, body wash, or shower
2 gel that is intended to serve the same function as body wash or soap,
3 and that is intended to be applied to or used on the human body in
4 the shower or bath;

5 (ii) Lotion;

6 (iii) Hand soap; and

7 (iv) Hand sanitizer.

8 (d) "Short-term rental" has the same meaning as defined in RCW
9 64.37.010.

10 (e) "Small plastic personal health or beauty product container"
11 means a plastic bottle, tube, sachet, or other plastic container with
12 less than a six-ounce capacity that is not intended to be reusable by
13 the end user and that contains a personal health or beauty product.

14 NEW SECTION. **Sec. 5.** (1) By November 1, 2025, the department of
15 fish and wildlife must conduct or contract for the completion of a
16 study to assess the durability of air-filled and foam-filled docks,
17 piers, ramps, and floats made of all materials. The study may not
18 include floatation devices prohibited in section 3 of this act.

19 (2) The study should assess the following:

20 (a) Durability;

21 (b) The costs associated with the purchase, installation,
22 replacement, maintenance, and disposal of products;

23 (c) Reuse or recycle potential;

24 (d) Buoyancy;

25 (e) Availability;

26 (f) Transport costs and requirements; and

27 (g) The degree to which flotation containers demonstrate the
28 ability to securely contain materials within a protective shell.

29 (3) The results of the study must be submitted to the appropriate
30 committees of the legislature and must include findings and
31 recommendations.

32 (4) In carrying out the study required under subsection (1) of
33 this section, the department of fish and wildlife or its contractor
34 must solicit input from a diverse set of affected stakeholders,
35 including ports, maritime associations, maritime businesses including
36 installers of docks or piers, manufacturers of floats, state,
37 federal, and local government entities, and environmental
38 organizations.

1 **Sec. 6.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to
2 read as follows:

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

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
12 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
13 sections 3 and 4 of this act, 70A.65.200, 70A.455.090, 76.09.170,
14 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
15 90.56.310, 90.56.330, and 90.64.102.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
17 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
18 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
19 90.48.120, and 90.56.330.

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

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

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70A.226.090.

33 (f) Decisions of the department regarding waste-derived
34 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
35 decisions of the department regarding waste-derived soil amendments
36 under RCW 70A.205.145.

37 (g) Decisions of local conservation districts related to the
38 denial of approval or denial of certification of a dairy nutrient
39 management plan; conditions contained in a plan; application of any
40 dairy nutrient management practices, standards, methods, and

1 technologies to a particular dairy farm; and failure to adhere to the
2 plan review and approval timelines in RCW 90.64.026.

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

6 (i) Decisions of the department of natural resources, the
7 department of fish and wildlife, and the department that are
8 reviewable under chapter 76.09 RCW, and the department of natural
9 resources' appeals of county, city, or town objections under RCW
10 76.09.050(7).

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

13 (k) Decisions of the department of fish and wildlife to issue,
14 deny, condition, or modify a hydraulic project approval permit under
15 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
16 comply, to issue a civil penalty, or to issue a notice of intent to
17 disapprove applications.

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

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

24 (n) Decisions of the department of ecology that are appealable
25 under RCW 70A.245.020 to set recycled minimum postconsumer content
26 for covered products or to temporarily exclude types of covered
27 products in plastic containers from minimum postconsumer recycled
28 content requirements.

29 (o) Orders by the department of ecology under RCW 70A.455.080.

30 (2) The following hearings shall not be conducted by the hearings
31 board:

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

34 (b) Hearings conducted by the department pursuant to RCW
35 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
36 70A.15.3110, and 90.44.180.

37 (c) Appeals of decisions by the department under RCW 90.03.110
38 and 90.44.220.

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

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

4 **Sec. 7.** RCW 43.21B.300 and 2022 c 180 s 813 are each amended to
5 read as follows:

6 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
7 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,
8 70A.245.070, 70A.245.080, sections 3 and 4 of this act, 70A.65.200,
9 70A.455.090, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
10 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by
11 a notice in writing, either by certified mail with return receipt
12 requested or by personal service, to the person incurring the penalty
13 from the department or the local air authority, describing the
14 violation with reasonable particularity. For penalties issued by
15 local air authorities, within 30 days after the notice is received,
16 the person incurring the penalty may apply in writing to the
17 authority for the remission or mitigation of the penalty. Upon
18 receipt of the application, the authority may remit or mitigate the
19 penalty upon whatever terms the authority in its discretion deems
20 proper. The authority may ascertain the facts regarding all such
21 applications in such reasonable manner and under such rules as it may
22 deem proper and shall remit or mitigate the penalty only upon a
23 demonstration of extraordinary circumstances such as the presence of
24 information or factors not considered in setting the original
25 penalty.

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

33 (3) A penalty shall become due and payable on the later of:

34 (a) Thirty days after receipt of the notice imposing the penalty;

35 (b) Thirty days after receipt of the notice of disposition by a
36 local air authority on application for relief from penalty, if such
37 an application is made; or

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

1 (4) If the amount of any penalty is not paid to the department
2 within 30 days after it becomes due and payable, the attorney
3 general, upon request of the department, shall bring an action in the
4 name of the state of Washington in the superior court of Thurston
5 county, or of any county in which the violator does business, to
6 recover the penalty. If the amount of the penalty is not paid to the
7 authority within 30 days after it becomes due and payable, the
8 authority may bring an action to recover the penalty in the superior
9 court of the county of the authority's main office or of any county
10 in which the violator does business. In these actions, the procedures
11 and rules of evidence shall be the same as in an ordinary civil
12 action.

13 (5) All penalties recovered shall be paid into the state treasury
14 and credited to the general fund except those penalties imposed
15 pursuant to RCW 18.104.155, which shall be credited to the
16 reclamation account as provided in RCW 18.104.155(7), RCW
17 70A.15.3160, the disposition of which shall be governed by that
18 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited
19 to the recycling enhancement account created in RCW 70A.245.100, RCW
20 70A.300.090, which shall be credited to the model toxics control
21 operating account created in RCW 70A.305.180, RCW 70A.65.200, which
22 shall be credited to the climate investment account created in RCW
23 70A.65.250, RCW 90.56.330, which shall be credited to the coastal
24 protection fund created by RCW 90.48.390, and RCW 70A.355.070, which
25 shall be credited to the underground storage tank account created by
26 RCW 70A.355.090.

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