

Washington [SB5284](#)- An Act Relating to Improving Washington's Solid Waste Management Outcomes

By: Michael Robinson

Purpose- The recycling rate in Washington has remained static since 2011. Many residents, particularly those who live in rural areas and in multifamily residences, do not have access to convenient or affordable curbside recycling, and must rely on taking recyclables to drop box locations, and that extended producer responsibility programs could make curbside recycling available and affordable for most people in the state. Intending that these programs be responsibly planned and funded in a manner that minimizes negative impacts on the environment and minimizes risks to public health and worker health and safety.

Unique Components- Non-compostable plastic film exemption, government employees are ineligible to serve on the board of the PRO, encouraging redesign and reuse, possibility of multiple PROs, reuse financial assistance program, advisory council, needs assessment, equity study, envisions a deposit return system, missing a true eco-modulation clause.

Needs Assessment- By December 31, 2026, the department must complete a preliminary needs assessment. By December 31, 2027, and every five years thereafter, the department must complete a needs assessment consistent with this act. The department must develop lists of covered materials determined to be recyclable or compostable statewide. By October 1, 2026, the department must develop initial lists for use and evaluation in the needs assessment.

- Required information: Existing waste reduction, refill, reuse, recycling, and composting outcomes, as applicable, for each covered material type, including collection rates, recycling rates, composting rates, reuse rates and return rates

Definitions-

- Covered Material- "Covered material" means packaging and paper products introduced into the state.
 - Exempt Material- Packaging for infant formula; packaging for medical food; packaging for fortified oral nutritional supplements; packaging for a product regulated as a drug; medical or dietary supplement regulated by the FDA; packaging for medical equipment regulated by the FDA; noncompostable film plastic packaging used in direct contact with raw meat; packaging for products regulated by the EPA under the federal insecticide, fungicide, and rodenticide

act; packaging used to contain liquefied petroleum gas and designed to be refilled; packaging used to contain hazardous or flammable products classified by the 2012 federal occupational safety and health administration hazard communication standard; packaging storing durable products for at least five years.

- Exempt Covered Material- Covered material distributed to another producer, commercial, or business entity; packaging not introduced to a person other than a commercial or business entity; covered material for which the producer demonstrates that the material is not collected through residential recycling, the material is recycled at a responsible market, the material is intended to be used and collected in a commercial setting, and the producer annually demonstrates that the material has a state or producer recycling rate of 65% by December 31, 2029 and 70% by January 1, 2030.
- Packaging- means a material, substance, or object that is used to protect, contain, transport, serve, or facilitate delivery of a product and is sold or supplied with the product to the consumer for personal, noncommercial use.
- Producer- Person responsible for compliance with requirements under this chapter for a covered material introduced into the state:
 - (i) For items sold in or with packaging at a physical retail location in this state:
 - (A) If the item is sold in or with packaging under the brand of the item manufacturer or is sold in packaging that lacks identification of a brand, the producer is the person that manufactures the item;
 - (B) If there is no person to which (A) applies, the producer is the person that is licensed to manufacture and sell or offer for sale to consumers in this state an item with packaging under the brand or trademark of another manufacturer or person;
 - (C) If there is no person to which (A) or (B) applies, the producer is the brand owner of the item;
 - (D) If there is no person described in (A), (B), or (C) of this subsection within the United States, the producer is the person who is the importer of record for the item into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state;
 - (E) If there is no person described in (A) through (D) of this subsection, the producer is the person that first distributes the item in or into this state;
 - (ii) For items sold or distributed in packaging in or into this state via e-commerce, remote sale, or distribution:

- (A) For packaging used to directly protect or contain the item, the producer of the packaging is the same as the producer identified for items sold at a physical location (listed above).
- (B) For packaging used to ship the item to a consumer, the producer of the packaging is the person that packages the item to be shipped to the consumer
- (iii) For packaging that is a covered material and is not included in (a)(i) and (ii) of this subsection, the producer of the packaging is the person that first distributes the item in or into this state;
- Exemptions- A person is the "producer" of a covered material sold, offered for sale, or distributed in or into this state, as defined in this subsection, except:
 - Mutual Agreement- Where another person has mutually signed an agreement with a producer as defined in this subsection that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered material. The producer must provide written certification of that contractual agreement to the producer responsibility organization. The following persons are not eligible to be the assigned recipient of responsibility as a producer under this subsection:
 - (I) A person who produces an agricultural commodity introduced under the brand or trademark of another manufacturer or person; or
 - (II) a distributor of a beverage sold in a beverage container; and
 - Franchise Exemption- If the producer described in this subsection is a business operated wholly or in part as a franchise, the producer is the franchisor, if that franchisor has franchisees that have a commercial presence within the state.
 - Other Exemptions- Government entities, Registered 501(C)(3) and 501(C)(4) organizations, De minimis producers.
- Recycling- transforming or remanufacturing covered materials into usable or marketable materials for use other than landfill disposal or incineration and does not include reuse or composting.

Dates for Compliance

- By January 1, 2026, each producer must appoint a producer responsibility organization or producer responsibility organizations to address its covered materials.
- By January 1, 2026, the Department of Ecology must appoint the initial membership of the advisory council
- By March 1, 2026, and annually thereafter, a producer responsibility organization must register with the department on behalf of its producers.
- By March 31, 2026, the Department of Ecology must determine the one-time payment and every 22 March 31st thereafter determine the annual registration fee
- By September 1, 2026, a producer responsibility organization must submit a one-time payment to the department, and each May 1st thereafter, a producer responsibility organization must submit an annual registration fee to fund all costs of the department to implement, administer, and enforce this chapter, including the costs of the department of labor and industries to implement and enforce this act.
- After July 1, 2026, a producer must be a member of a producer responsibility organization registered in this state or register as a producer responsibility organization that will implement an individual plan.
- By July 1, 2026, the Department of Ecology determine the one-time registration fee
- December 31, 2026, complete the preliminary needs assessment required.
- By December 31, 2027, and every five years thereafter, the Department of Ecology must complete the statewide needs assessment
- By October 1, 2028, and every five years thereafter, each PRO must submit a plan to the department that describes the proposed operation by the organization of programs to fulfill the requirements of this act incorporating the findings of the needs assessment.
 - By January 1, 2030, or within six months of plan approval, whichever is later, implement the plan approved by the department.
 - By July 1, 2031, and each July 1st thereafter, submit an annual report to the department for the prior calendar year.
- Beginning March 1, 2029, a producer that is not a member in good standing with a registered producer responsibility organization or has not submitted an individual plan may not introduce covered materials into the state.

Compliance Concerns

- **Anti-trust Exemption-** The benefits of collaboration, together with active state supervision, outweigh potential adverse impacts. Therefore, the legislature exempts from state antitrust laws and provides immunity through the state action doctrine from federal antitrust laws, activities that are undertaken in compliance with and pursuant to this act.
- **Performance Targets-** Does not include combustion, fuel production, and other forms of energy recovery of plastic covered materials in processing or disposal;
- **One year prior to the submission of a plan,** a producer, group of producers, or a producer responsibility organization may submit a petition to the department to request for reasons of public health or safety the temporary exclusion of packaging used to contain
 - (a) Raw meat products that are demonstrated to transfer pathogens to direct contact packaging.
 - (b) Products regulated under the poison prevention packaging act of 1970.
 - (c) Products subject to requirements under federal laws that make their inclusion in the requirements of this chapter infeasible or inadvisable.

Advisory Council- The act establishes an advisory council made up of industry representatives from trade associations, recycling, solid waste collection, retailers, nonprofit environmental organizations, material recovery facility, community-based nonprofit environmental justice organization, state representatives etc.

Fees Structure- Establish an initial producer fee structure to fund the initial implementation of the program, to be used until the producer responsibility program has an approved plan and collect fees annually from registered producers.

- Must provide at least \$5,000,000 beginning in 2029 to implement a reuse financial assistance program to reduce the negative environmental impacts of covered materials through reuse.

Penalties- The department may administratively impose a civil penalty of up to \$1,000 per violation per day on any producer who violates this chapter and up to \$10,000 per violation per day for the second and each subsequent violation.

- A person may not sell or distribute in or into the state a covered material of a producer that is not participating in a producer responsibility organization or that is not in compliance with the requirements of this chapter or rules adopted under this chapter.



Eco-Modulation- Each producer responsibility organization must propose performance targets based on the needs assessment that meet the statewide requirements that must be included in an approved plan. Performance targets must include reuse rates, return rates, recycling rates for materials delivered to responsible markets, composting rates, and targets for plastic source reduction and postconsumer recycled content by covered materials type, as applicable. There is no express mention of eco-modulation of fee structure based on meeting performance targets. It does set up a system that seeks to reduce material use and setting up requirements that would incentivize this result, so they may introduce eco-modulation in the stewardship plan.