



# Section-by-Section Summary of Legislative Concept 578

Nov. 18, 2020

This summary has been prepared by the Oregon DEQ for the convenience of readers. It is intended to provide a general, section-by-section orientation to LC 578.

LC 578 is a draft concept and some content may be subject to more than one interpretation. Given its length and complexity, there will be places where the language needs to be amended to be consistent with the Recycling Steering Committee (RSC) consensus agreement.

## Legislative Findings; Definitions

**Section 1** establishes that the next 35 sections (Sections 2 – 36), which include new provisions, shall be added to ORS 459A.

**Section 2** proposes some Legislative findings and general policy, some of which is sourced from *Materials Management in Oregon: 2050 Vision and Framework for Action*, which is the state's plan, adopted by the Environmental Quality Commission, for sustainable materials management.

**Section 3** provides definitions for a number of terms used in subsequent sections, including “covered products,” “producer,” and “responsible end market.”

## Producer Responsibility Organizations

**Section 4** obligates certain producers to join, pay fees, and provide information to a producer responsibility organization (PRO). Section 4 obligates PROs to support recycling of covered products, and requires coordination if multiple PROs are formed. It requires PROs to maintain a registry of members, notify DEQ of non-compliance by members, and deny membership to any producer making deceptive or misleading claims of recyclability.

**Section 5** exempts small producers (which are defined in Section 2).

**Section 6** requires that PROs provide DEQ with a producer responsibility plan. It lists the requirements of such a plan, including maximizing the use of existing infrastructure, providing incentives to producer members for environmentally responsible design through eco-modulation of fees, ensuring that materials are properly managed post-processing, and improving collection opportunities and social equity outcomes.

**Section 7** describes the processes and timelines by which DEQ may either accept or reject a proposed producer responsibility plan, as well as plan amendments. It establishes that plans are valid for a period of four years, and requires DEQ to solicit feedback through public comment and from the new Oregon Recycling System Advisory Council during the review of draft plans and plan amendments.

**Section 8** describes requirements specific to plan amendments and notification to DEQ.

**Section 9** establishes requirements for the fees that PROs charge to their members, including eco-modulation to incent design for environment considerations. It also allows PROs to charge flat fees to smaller members.

**Section 10** establishes reporting requirements of PROs, including requirements for annual reports, report revisions, and special quarterly reports regarding material disposition. It requires DEQ to review reports, share reports with the public, and consult with the Oregon Recycling System Advisory Council. It also allows for content related to the market shares of individual producers to be kept confidential.

**Section 11** requires PROs to reimburse local governments or their agents for certain expenses, including transferring covered products from an aggregation point to a processing facility, delivery of required contamination reduction programming, and expansion of recycling collection services. It creates a process to define reasonable expenses and allows for DEQ to resolve disputes.

**Section 12** requires PROs to develop and make available to local governments culturally-responsive educational resources to promote the uniform statewide recycling list (established in Section 19). It requires local governments to utilize these resources, and requires both review of statewide resources by the Oregon Recycling System Advisory Council and approval by DEQ.

**Section 13** establishes three additional requirements of PROs. First, to periodically study challenges in multifamily recycling and make recommendations to improve multifamily recycling, including reducing barriers to access. These recommendations must later be acted upon. Second, to provide for drop-off and mobile collections of certain materials (as identified in Section 19(1)(b)). Finally, to ensure that covered products collected for recovery in Oregon are delivered to responsible end markets, and managed in environmentally responsible ways and in accordance with the state's waste hierarchy.<sup>1</sup>

**Section 14** requires PROs to carry out litter prevention and control activities, or to fund eligible activities.

## **Oregon Recycling System Advisory Council**

**Section 15** establishes the membership of the Oregon Recycling System Advisory Council (ORSAC), requires the Governor to appoint members, establishes terms, requires meetings at least quarterly, and provides for both administrative support and compensation of members.

**Section 16** defines the duties of the ORSAC, which include making recommendations to both DEQ and the PROs on a variety of topics, and the submittal of a report to the Legislature every two years.

## **Responsibilities of Local Governments**

**Section 17** prohibits local governments and their agents from delivering commingled recyclables collected under the Opportunity to Recycle Act to commingled processing facilities unless such facilities meet performance standards (described in Section 29 and 30) and social equity considerations.

**Section 18** requires that local governments, as part of their Opportunity to Recycle Act obligations, ensure adequate space for collection and placement of containers at multifamily properties. (PRO obligations to support expansion of multifamily recycling are contained in Sections 6, 11 and 13.) It also

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<sup>1</sup> The RSC agreement included support for a provision to “protect ratepayers from increased costs/reduce costs to rate payers” in the context of processing and marketing of recyclables. LC 578 does not fully address this provision. This topic will need to be resolved via an amendment.

requires local governments to ensure that collection containers (all types and sectors) contain at least 10 percent verified post-consumer content.

## **Responsibilities of the Environmental Quality Commission and DEQ**

**Section 19** requires the creation of the lists of materials for recycling:

- Section 19(1) requires the EQC to determine in rule materials suitable for collection and methods of collection, in consultation with PROs and the Oregon Recycling System Advisory Council. The EQC is also directed to distinguish between materials where local governments are responsible for collection (under Opportunity to Recycle Act requirements – see 19(1)(a)) versus where producers are responsible (special collections – see 19(1)(b)).
- Section 19(2) provides that materials deemed suitable for collection may be collected via on-route collection in some areas and via drop-off recycling in others.
- Section 19(3) defines criteria the EQC must consider in determining suitability of materials for collection, collection mode (commingled vs. not), method (on-route vs. drop-off), and responsible party.
- Section 19(4) directs DEQ to establish the uniform collection list for the state, combining the EQC's list from Section 19(1) with additional materials, if any, contained in an approved producer plan.
- Section 19(5) prohibits the commingled collection of any materials not on the uniform collection list.
- Section 19(7) establishes a process for setting collection targets, convenience standards and performance standards for materials collected by producers.
- Sections 19(8) and (9) involve the identification of “specifically identified materials,” a term that is used in Section 6 (producer plan requirements).

**Section 20** establishes a specific but not yet determined recovery goal for plastic packaging, and makes failure to achieve that goal cause for a plan amendment by PROs.

**Section 21** addresses contamination reduction. It requires the establishment of both state and local contamination reduction goals. It requires local governments, disposal site operators providing drop-off recycling sites, and their agents to implement contamination reduction programs, considering a list of approved practices that have been reviewed by DEQ for their cost-effectiveness. It directs the EQC to establish parameters for local enforcement efforts.

**Section 22** requires DEQ, in consultation with local governments, ORSAC, and other interested parties, to conduct a periodic study of social equity considerations in Oregon's recycling system. It requires businesses to provide information necessary to conduct the study, and requires PROs to make improvements in response to study recommendations.

**Section 23** authorizes DEQ to assess fees to PROs for the purpose of cost recovery.

**Section 24** requires DEQ to establish a waste prevention and reuse grant program, funded by additional fees charged to PROs.

**Section 25** directs the EQC to establish rules for the evaluation and disclosure of life cycle impacts of covered products. These rules apply to voluntary incentives related to impact disclosure (see Section 9), as well as a new requirement of large producers to evaluate and disclose impacts.

**Sections 26 and 27** create a new Producer Responsibility Fund and Waste Prevention and Reuse Fund.

**Section 28** addresses product labeling. It prohibits the sale of any product that makes a deceptive or misleading claim regarding recyclability, or any claim of compostability, unless the claim complies with rules to be established by the EQC.

## **Commingled Recycling Processing Facilities**

**Section 29** requires operators of commingled recycling processing facilities to obtain a permit from DEQ, and establishes permit requirements including effective sortation, contaminant removal, use of responsible end markets, nuisance avoidance, and disclosure requirements.

**Section 30** directs DEQ to establish a certification program or approve a third-party operated program that satisfies the same requirements as Section 29. (This relates to requirements in Section 17 that local governments direct commingled recyclables to facilities that meet minimum standards and is specifically designed to allow for parity between permitted in-state facilities and facilities located in other states.)

**Section 31** requires DEQ to establish forms and procedures to allow for consistency in evaluating in-bound contamination at reload and processing facilities.

## **Enforcement**

**Section 32** addresses enforcement and recordkeeping. It affords DEQ the right to conduct site inspections; allows DEQ to issue compliance orders and to revoke a previously-approved producer plan; allows DEQ to bring actions against both PROs and individual producers; requires recordkeeping and records maintenance by PROs and parties with control of material; and requires the sharing of records when necessary to allow PROs to meet their requirements.

## **Miscellaneous**

**Section 33** affirms the right of individual compost facilities to decide what paper and packaging, if any, to accept for composting. It allows the EQC to adopt rules requiring producers to conform to standards for compostability.

**Section 34** directs the Oregon Department of Administrative Services to periodically assess state procurement policies and programs relating to the purchase of recycled materials.

**Section 35** provides limited protection from federal anti-trust laws to members of PROs.

**Section 36** grants authority to the EQC to adopt rules as necessary to implement all previous sections of the Legislative Concept.

## **Amendments to Existing Statutes**

**Section 37** adds “materials management” to the definitions in ORS 459.005.

**Section 38** modifies ORS 459.015 (“Policy”) to clarify the purpose of waste recovery, introduce a whole life cycle perspective, and include principles of environmental and social justice and producer responsibility. It places the solid waste hierarchy within broader materials management concepts, updates the hierarchy to prioritize practices that have lower negative impact, and adds several new considerations to the policy of the state with regards to waste recovery.

**Section 39** amends ORS 459.995 (enforcement) to include requirements in Sections 2 – 36 of the Legislative Concept.

**Sections 40 and 41** amend the definition of “opportunity to recycle” in ORS 459A.005 to include collection of materials on the uniform statewide list described in Section 19.

**Section 42** amends ORS 459A.007 (opportunity to recycle program elements) by replacing references to collection of “principal recyclable materials” with references to collection of materials on the uniform statewide list.

**Section 43** amends ORS 459A.008 (optional expanded education and promotion program element) by deleting the sub-element involving assessing and reducing contamination in collected recyclables. This deleted sub-element is redundant with new requirements in Section 21.

**Section 44** removes a reference to “principal recyclable materials” from ORS 459A.025.

**Section 45** fixes a problem with how the original (1983) Recycling Opportunity Act was incorrectly incorporated into statute, and makes exemptions apply only to the sections of statute for which DEQ understands them to be relevant.

**Section 46** amends ORS 459A.080 to allow the EQC to adopt rules providing exemptions to the prohibition on mixing of source separated recyclables with solid waste.

**Sections 47 and 48** change cross-references to statute that is renumbered due to other sections of the Legislative Concept.

**Section 49** amends ORS 90.318 (criteria for landlord provision of recycling services), replacing principal recyclable materials with materials on the uniform statewide collection list.

## **Repeals**

**Section 50** repeals the requirements for labeling plastic packaging with a resin identification code and chasing arrows symbol.

## **Temporary Provisions**

**Sections 51 and 52** contain “temporary provisions” related to the first studies of multifamily recycling (Section 13), system equity (Section 22), and procurement laws (Section 34), as well as the first producer responsibility organization plans (Section 6).

**Section 53** staggers the initial terms of members of the Oregon Recycling System Advisory Council (Section 15).

## **Unit and Section Captions**

**Section 54** provides standard language related to unit and section captions provided for the convenience of the reader.

## **Alternative formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).