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**SUBSTITUTE HOUSE BILL 2656**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Gregerson, Dye, Doglio, Peterson, Mead, Fitzgibbon, Thai, Senn, Goodman, Ramos, Pollet, and Macri)

AN ACT Relating to reducing waste associated with single-use food service products; amending RCW 70.95.080; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and providing expiration dates.

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

NEW SECTION. **Sec.**  (1) The legislature finds that plastic products have proliferated in modern commerce. While many plastic products feature some positive environmental, economic, and logistical attributes, the costs of many plastic products, especially single-use plastic products, far outweigh their benefits. Plastic utensils, straws, cups, plates, and wrappers all frequently wind up as litter or end up polluting our marine environment. Single-use plastics break down into small, toxic pieces in the marine environment and enter the diets of fish, birds, and other organisms, where they may pose a particular burden for endangered species like salmon and southern resident killer whales. Single-use plastic food service products also contaminate our recycling and compost systems, contaminating other recyclables, such as paper, and reducing the cost-effectiveness of recycling other plastic products and jeopardizing the quality of our compost.

(2) Therefore, in light of the need to protect our sensitive marine environments, and with a desire to lead a transition to more environmentally sustainable alternatives, it is the intent of the legislature to:

(a) Phase out the use of single-use plastic food service products, and to take other steps to reduce waste from single-use food service products; and

(b) Through a fee on single-use plastic food service products, disincentivize the use of single-use plastic food service products prior to the effective date of restrictions and provide financial support for local governments to begin planning for a future in which all single-use food service products are compostable.

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

(1) "Compostable" means a product that meets the requirements of RCW 70.360.040.

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

(3) "Department" means the department of ecology.

(4) "Food service businesses" means businesses selling or providing food for consumption on or off the premises, including full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks, booths, or carts, home delivery services, and business or institutional cafeterias.

(5)(a) "Food service product" means a product on or in which foods or beverages are placed or packaged or are intended to be placed or packaged that are designed for one-time use. "Food service product" includes, but is not limited to, containers, plates, bowls, cups, beverage containers, bottles, lids, meat trays, deli rounds, utensils, sachets, straws, tea bags, condiment packaging, clamshells and other hinged or lidded containers, sandwich wrap, and portion cups.

(b) "Food service product" does not include packaging of any type that serves to protect or preserve food in transit from a food processor or wholesaler to a retail establishment.

(c) "Food service product" does not include packaging of any type that serves to protect or preserve food solely while refrigerated at a retail establishment prior to sale or provision to a customer.

(6) "Noncompostable" means not meeting the definition of compostable.

(7) "Plastic food service product" means a food service product that is composed of:

(a) Plastic; or

(b) Fiber or paper with a plastic coating, window, component, or additive.

(8) "Polystyrene foam food service product" means a food service product that is made of blown polystyrene or expanded or extruded foam that is a thermoplastic petrochemical material using a styrene monomer and processed by any technique.

(9)(a) "Prepackaged food" means food service products that have been filled and sealed with food by a separate food service business or food manufacturer prior to receipt by the point of sale retail establishment.

(b) "Prepackaged food" includes a utensil, straw, or other item physically attached for purposes of retail sale to a food service product that has been filled and sealed with food prior to receipt by the point of sale retail establishment.

(10)(a) "Producer" means a person who manufactures a single-use food service product under that person's own name or brand or who sells or offers for sale the single-use food service product.

(b) If there is no person who is the producer of the single-use food service product for purposes of (a) of this subsection, the producer is the person who imports the single-use food service product as the owner or licensee of a trademark or brand under which the single-use food service product is sold or distributed in the state.

(c) If there is no person who is the producer for purposes of (a) or (b) of this subsection, the producer is the person that offers for sale, sells, or distributes the single-use food service product in the state.

(11) "Retail establishment" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer, including to a food service business. "Retail establishment" includes, but is not limited to, food service businesses, grocery stores, department stores, hardware stores, home delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.

(12) "Tippy cup lid" means a standard size lid designed to be affixed to the top of a beverage cup to reduce the risk of spills that allows a person to drink the beverage from the cup without requiring the use of a straw.

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

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

NEW SECTION. **Sec.**  (1) Except as provided in subsection (3) of this section, beginning January 1, 2021, a food service business at which the opportunity is provided for the on-site consumption of food or beverages may provide the following types of single-use food service products only upon the request of the consumer:

(a) Utensils;

(b) Straws; and

(c) Condiment packaging.

(2) A food service business at which no opportunity is provided for the on-site consumption of food or beverages or that is serving a customer via a drive-through may provide types of single-use food service products identified in subsection (1) of this section only after asking if the customer would like to obtain the single-use food service products, and the customer responds affirmatively.

(3)(a) A food service business may make utensils available to customers using cylinders, bins, dispensers, containers, or other means of allowing for individual single-use utensils, to be obtained at the affirmative volition of the customer.

(b) Single-use utensils provided by a food service business for use by customers may not be bundled or packaged in plastic in such a way that a customer is unable to take only the type of utensil or utensils desired without also taking a different type or types of utensil.

(4) Nothing in this section restricts the ability of a food service business to make condiments available to customers using bulk condiment dispensers, containers, or other means of allowing condiments that are not packaged in individual serving portions to be obtained at the affirmative volition of the customer.

(5) Nothing in this section restricts the ability of a food service business to offer a tippy cup lid in lieu of a straw to a customer that requests a straw.

NEW SECTION. **Sec.**  (1)(a) Beginning October 1, 2021, and each October 1st through 2029, the department must determine which counties and any cities preparing independent solid waste management plans are serviced by solid waste facilities that provide for the composting of compostable food service products.

(b) The department must determine and designate that the restrictions of this section apply to retail establishments in a jurisdiction unless a county or a city preparing an independent solid waste management plan provides written notification to the department indicating that the county or city is not serviced by a solid waste facility that provides for the composting of compostable food service products.

(c) The restrictions of this section take effect in a county or city January 1st of the year following the determination by the department required under this section. The department must make the result of the annual determinations required under this section available on its web site.

(2)(a) Beginning January 1, 2022, except as provided under (b) of this subsection and section 6 of this act, retail establishments located in a jurisdiction that is serviced by solid waste facilities that provide for the composting of compostable food service products, as determined and designated under subsection (1) of this section, may not sell or provide food for consumption on or off the premises in or with plastic food service products.

(b)(i) Beginning July 1, 2022, retail establishments located in a jurisdiction determined and designated under subsection (1) of this section may not sell or provide food for consumption on or off the premises in or with plastic catering trays and produce bags.

(ii) Beginning on a date determined by the department pursuant to section 5 of this act, retail establishments located in a jurisdiction determined and designated under subsection (1) of this section may not sell or provide:

(A) Clear plastic food wrap and shrink wrap;

(B) Plastic containers for uniquely shaped foods such as deviled eggs and cupcakes;

(C) Flexible plastic packaging used to preserve moisture and freshness, such as for cookies; and

(D) Hot meat item plastic containers, such as those for ribs and rotisserie chicken. Notwithstanding the foregoing, the department may not enact a rule that would have a detrimental impact on safe food handling of hot meat items such as by restricting hot meat item plastic containers prior to a commercially viable and equally safe alternative being widely commercially available.

(c) For all categories of plastic food service products not described in (b) of this subsection, the restrictions of this subsection take effect January 1, 2022, as provided in this subsection.

(3)(a) Retail establishments may sell or provide food in compostable food service products.

(b) A retail establishment may sell or provide:

(i) Durable, reusable food service products;

(ii) Recyclable fiber-based, glass, or metal food service products;

(iii) Recyclable plastic bottles and other beverage containers made from high density polyethylene (HDPE) or polyethylene terephthalate (PET);

(iv) Prepackaged foods in plastic packaging; and

(v) Compostable food service products that the department has verified as free of per and poly fluoroalkyl substances under chapter 70.95G RCW.

(4) Upon the effective date of restrictions on single-use plastic straws under this section in a jurisdiction, and in recognition that a straw is an adaptive utensil that may provide a basic accommodation for an individual with a disability to eat and drink, a retail establishment that provides straws of any type to customers is authorized to and may provide a single-use plastic straw to an individual with a need for a plastic straw upon request by the individual for a plastic straw.

(5) This section expires January 1, 2030.

NEW SECTION. **Sec.**  (1) The department must review the availability of compostable alternatives to the categories of food service products specified in section 4(3)(b) of this act by July 1, 2022. Upon review, if the department determines that at least two suitable and readily available alternatives exist and at least two vendors make a suitable alternative for a category of food service product commercially available, the department must establish a delayed effective date of four hundred eighty-five days after such a determination for each category of food service product. If the department does not make a determination to establish a delayed effective date by July 1, 2022, for one or more categories of food service products, by each July 1st thereafter the department must annually review and make a determination whether to establish a deadline extension date for each category of food service products for which no deadline has yet been established. In making a determination under this subsection, the department must give consideration to information provided by retail establishments.

(2) This section expires January 1, 2030.

NEW SECTION. **Sec.**  (1) Upon application, the department may grant a waiver from the requirements of sections 4 and 7 of this act for specific categories of food service products. A waiver granted under this section may be of a duration of up to one year and may be renewed by the department upon expiration. A waiver granted by the department may apply to the applicant, statewide, or under specified circumstances identified by the department. The department may only grant a waiver under this section when the department determines, with consideration to evidence supplied by the applicant, that:

(a) A category of plastic food service product restricted under this chapter does not have at least two suitable and readily commercially available alternative products;

(b) There are not at least two vendors that make commercially available a suitable alternative product to a category of food service product; or

(c) The enforcement of this chapter would cause undue hardship.

(2) The department must adopt rules to establish waiver guidelines, submission requirements, and renewal procedures.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2030, retail establishments may not sell or provide food for consumption on or off the premises in or with a plastic food service product.

(2) Retail establishments may sell or provide:

(a) Food in compostable food service products;

(b) Durable, reusable food service products;

(c) Recyclable fiber-based, glass, or metal food service products;

(d) Recyclable plastic bottles and other beverage containers made from high density polyethylene (HDPE) or polyethylene terephthalate (PET);

(e) Prepackaged foods in plastic packaging; and

(f) Compostable food service products that the department has verified as free of per and poly fluoroalkyl substances under chapter 70.95G RCW.

(3) The department may grant a waiver from the requirements of subsection (1) of this section consistent with section 6 of this act.

(4) In recognition that a straw is an adaptive utensil that may provide a basic accommodation for an individual with a disability to eat and drink, a retail establishment that provides straws of any type to customers is authorized to and may provide a single-use plastic straw to an individual with a need for a plastic straw upon request by the individual for a plastic straw.

NEW SECTION. **Sec.**  (1) The department must establish a single-use food service product fee per item sold by a producer to a customer for final sale in Washington beginning January 1, 2022. The amount of the fees established by the department are as follows:

(a) One cent per item that is not recyclable or compostable; and

(b) Up to one cent per item for items that are recyclable. The department must determine the amount of the fee for recyclable items based on the average net cost of recycling each material type and form and the amount of the material type used in plastic food service products sold in Washington.

(2) Each producer must remit the fee assessed under this section to the department of revenue for deposit into the plastic waste reduction account created in section 11 of this act.

(3) Beginning January 1, 2030, the department must annually adjust the fees in subsection (1) of this section for inflation based on the consumer price index for all urban consumers applicable to the area encompassing the city of Seattle, as calculated by the United States bureau of labor statistics.

(4) The department may adopt rules to implement the fees required in this section.

(5) The fee in this section may not be imposed upon a product that is subject to a statewide plastic packaging product stewardship program that requires manufacturers of the product to provide for funding a program that requires, at minimum, the collection, transport, and end-of-life management costs of the product, including any such programs enacted consistent with recommendations to the legislature required under chapter 70.380 RCW.

NEW SECTION. **Sec.**  (1)(a) Except as provided in (b) of this subsection, a retail establishment in violation of this chapter is subject to a fine of up to five thousand dollars per violation.

(b) A retail establishment that is a small business as defined in RCW 19.85.020 in violation of this chapter is subject to a fine of up to one hundred dollars per violation.

(c) A separate violation occurs for each calendar day of operation in which a retail establishment is not in compliance with the requirements of this chapter. Penalties must be deposited in the plastic waste reduction account created in section 11 of this act.

(2)(a) The department must provide education and carry out outreach activities to inform retail establishments, consumers, and other interested individuals about the requirements of this chapter. The education and outreach activities carried out by the department must include education and outreach programs suitable for small business owners and the state's diverse ethnic populations, including language appropriate materials and targeted outreach and distribution of culturally appropriate materials. The department must prioritize outreach, including technical assistance with waiver applications under section 6 of this act, to small businesses and women and minority-owned businesses.

(b) In carrying out its responsibilities under this chapter, the department must emphasize education and outreach rather than enforcement to achieve compliance with the requirements of this chapter.

(3) The department may adopt rules for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. **Sec.**  (1) Beginning July 1, 2020, a city, town, county, or municipal corporation may not enact an ordinance to reduce pollution from single-use plastic food service products by requiring a request of plastic food service products by the customer of the food service business or other retail establishment.

(2) Any local plastic food service products ordinance of the type described in subsection (1) of this section that is in effect as of July 1, 2020, is not preempted or repealed.

NEW SECTION. **Sec.**  The plastic waste reduction account is created in the state treasury. All receipts from fees and penalties collected under this chapter must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for administering, implementing, and enforcing the requirements of this chapter and for the state and local programs authorized for expenditures in RCW 70.105D.190(2) (b) and (e), including for the development of local solid waste management plans components required by RCW 70.95.080(3) and for the development of plans and infrastructure to support the statewide provision of composting infrastructure by a target date of 2027.

NEW SECTION. **Sec.**  Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide the service itself or by contract under RCW 81.77.020.

NEW SECTION. **Sec.**  By November 1st of every even-numbered year, beginning in 2022, the department must submit a report to the legislature that:

(1) Addresses the status of composting infrastructure available to serve local jurisdictions across Washington in preparation for the 2030 statewide restrictions on plastic food service products, relying upon information included in local solid waste management plans under RCW 70.95.080(3); and

(2) Assesses whether an update to the definition of "compostable" used in section 2 of this act would be beneficial in ensuring that a statewide standard applicable to compostable products also ensures that these products may be composted and managed appropriately by facilities that receive them.

**Sec.**  RCW 70.95.080 and 2010 c 154 s 2 are each amended to read as follows:

(1) Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties. The purpose is to plan for solid waste and materials reduction, collection, and handling and management services and programs throughout the state, as designed to meet the unique needs of each county and city in the state. When updating a solid waste management plan developed under this chapter, after June 10, ((~~2010~~)) 2020, local comprehensive plans must consider and plan for the following handling methods or services:

(a) Source separation of recyclable materials and products, organic materials, and wastes by generators;

(b) Collection of source separated materials;

(c) Handling and proper preparation of materials for reuse or recycling;

(d) Handling and proper preparation of organic materials for composting or anaerobic digestion; and

(e) Handling and proper disposal of nonrecyclable wastes.

(2) When updating a solid waste management plan developed under this chapter, after June 10, ((~~2010~~)) 2020, each local comprehensive plan must, at a minimum, consider methods that will be used to address the following:

(a) Construction and demolition waste for recycling or reuse;

(b) Organic material including yard debris, food waste, compostable food service products as defined in section 2 of this act, and food contaminated paper products for composting or anaerobic digestion;

(c) Recoverable paper products for recycling;

(d) Metals, glass, and plastics for recycling; and

(e) Waste reduction strategies.

(3) When updating a solid waste management plan developed under this chapter after June 10, 2020, each local plan must include an assessment of the logistical and economic feasibility of the development and use of infrastructure, including appropriate collection services for residential and commercial solid waste customers, that would allow for the widespread commercial composting of organic materials, including compostable food service products as defined in section 2 of this act, generated in the jurisdiction by a target deadline of 2030. Adequate funding that does not require local matching funds must be provided to each county to meet the requirements of this subsection at least one year prior to each county's required update as defined in RCW 70.95.110 or the requirement in this subsection is null and void.

(4) Each city shall:

(a) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan;

(b) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

(c) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

((~~(4)~~)) (5) Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

((~~(5)~~)) (6) After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

((~~(6)~~)) (7) Local governments shall not be required to include a hazardous waste element in their solid waste management plans.

NEW SECTION. **Sec.**  Section 7 of this act takes effect January 1, 2030.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 70 RCW.

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

**--- END ---**