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**SUBSTITUTE HOUSE BILL 2722**

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

**By** House Environment & Energy (originally sponsored by Representatives Mead, Fitzgibbon, Peterson, Doglio, Goodman, Gregerson, Slatter, Tarleton, Davis, Duerr, Ramel, Walen, Cody, Senn, and Pollet)

AN ACT Relating to minimum recycled content requirements; adding a new section to chapter 42.56 RCW; adding a new chapter to Title 70 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) Sustainable and resilient markets for recycled materials are essential to any successful recycling system. For many years, Washington has depended on foreign markets to accept the recyclable materials that are collected for recycling in the state. Developing domestic markets for recycled materials benefits the environment and the state's economy and is critical due to the loss of foreign markets.

(2) China's 2018 national sword policy bans the importation of recycled mixed paper and certain types of recycled plastic and imposes a stringent one-half of one percent contamination limit on all other recycled material imports. Washington's recycling facilities are struggling to find markets for recycled materials, resulting in the stockpiling of these materials. Washington must reduce its reliance on unpredictable foreign markets for its recycled materials.

(3) Plastic and glass bottles can be recycled and can contain recycled content in order to close the loop in the recycling stream. Many companies have already taken the initiative at closing the loop by using plastic bottles that contain one hundred percent recycled content. Since November 2010, one national juice company has been using bottles made with one hundred percent postconsumer recycled content for all of its juices and juice smoothies. In January 2018, an international beverage producer announced that it will make all its bottles from one hundred percent recycled plastic by 2025.

(4) The requirements imposed by this chapter are reasonable and are achievable at minimal cost relative to the burden imposed by the continued excessive use of virgin materials in beverage containers in Washington.

NEW SECTION. **Sec.**  (1)(a) Between January 1, 2021, and December 31, 2024, inclusive, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must contain no less than ten percent postconsumer recycled plastic per year.

(b) Between January 1, 2025, and December 31, 2029, inclusive, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must contain no less than twenty-five percent postconsumer recycled plastic per year.

(c) On and after January 1, 2030, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must contain no less than fifty percent postconsumer recycled plastic.

(2)(a) At least annually, or at the petition of the beverage manufacturing industry not more than semiannually, the director of the department of ecology shall consider whether the minimum recycled content requirements required pursuant to subsection (1) of this section should be waived or reduced. If the director of the department of ecology receives a petition from the beverage manufacturing industry, the director shall consider the petition within sixty days. If the director of the department of ecology makes a finding that a minimum recycled content requirement pursuant to this section should be adjusted, the adjusted rate for the requirement must be in effect until a new determination for the requirement is made or upon the expiration of the requirement's effective period, whichever occurs first. The director of the department of ecology may not adjust the minimum recycled content requirements above the minimum postconsumer recycled plastic content percentages required pursuant to subsection (1) of this section. In making a determination pursuant to this subsection, the director of the department of ecology shall consider, at a minimum, all of the following:

(i) Changes in market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum recycled content requirements pursuant to subsection (1) of this section, including the availability of high quality recycled plastic, and food grade recycled plastic from beverage container recycling programs;

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

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

(b) The beverage manufacturing industry or a beverage manufacturer may appeal the director of ecology's decision made pursuant to this subsection to the pollution control hearings board within forty-five days of the director's decision. An administrative law judge shall hear the appeal within forty-five days of the request for an appeal. The administrative law judge's review is de novo.

(c) For the purposes of this section, "beverage manufacturing industry" means an association that represents companies that manufacture beverages.

(3) The department of ecology may grant extensions to the minimum recycled plastic content requirements required under subsection (1) of this section if the department of ecology makes a finding that a beverage manufacturer has made a substantial effort but has failed to meet the minimum recycled plastic content requirements due to extenuating circumstances that are out of the beverage manufacturer's control.

(4) On or before March 1, 2021, and annually thereafter, a beverage manufacturer of a beverage described in section 4 of this act sold in a plastic beverage container described in section 4 of this act must report to the department of ecology in pounds and by resin type the amount of virgin plastic and postconsumer recycled plastic used by the beverage manufacturer for plastic beverage containers containing a beverage described in section 4 of this act sold, offered for sale, or distributed in Washington in the previous calendar year. The beverage manufacturer shall submit this information to the department of ecology under penalty of perjury.

(a) The department of ecology shall post the information reported under this subsection on the department's web site.

(b) This subsection does not apply to a refillable plastic beverage container.

(5) A beverage manufacturer that does not meet the minimum recycled plastic content requirements established in subsection (1) of this section is subject to a fee established in section 5 of this act.

(6) The department of ecology may conduct audits and inspections and take enforcement action pursuant to this chapter against a beverage manufacturer for the purpose of ensuring compliance with this section based on the information reported under subsection (4) of this section.

(7) The department of ecology shall keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment that the department gathers or becomes aware of through the course of conducting audits or inspections pursuant to this chapter.

(8) This section does not apply to:

(a) Refillable plastic beverage containers;

(b) Rigid plastic containers or rigid plastic bottles that are medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products; or

(c) Bladders or pouches that contain wine.

(9) The legislature encourages beverage manufacturers to use plastic beverage containers that contain one hundred percent recycled plastic content.

NEW SECTION. **Sec.**  The recycling enhancement fee account is created in the custody of the state treasurer. All fees collected by the department of ecology pursuant to section 2 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of ecology only for supporting waste reduction, litter collection, and the recycling, infrastructure, collection, and processing of plastic beverage containers in this state.

NEW SECTION. **Sec.**  (1) This section and sections 2, 3, and 5 of this act apply only to any individual, separate, sealed plastic bottle, bladder, or pouch, except for polycoated cartons, foil pouches, and drink boxes that contain the following beverages, intended for human or animal consumption and in a quantity less than or equal to one gallon, offered for sale, sold, or distributed in Washington:

(a) The following beverages, intended for human or animal consumption and in a quantity less than or equal to one gallon:

(i) Water and flavored water;

(ii) Beer or other malt beverages;

(iii) Wine; and

(iv) Mineral waters, soda water, and similar carbonated soft drinks;

(b) Any beverage other than those specified in (a) of this subsection that is intended for human or animal consumption and is in a quantity more than or equal to two fluid ounces and less than or equal to one gallon, except infant formula or any other exemptions adopted by the department of ecology by rule.

(2) For the purposes of this chapter, "beverage manufacturer" means a manufacturer of one or more beverages described in subsection (1) of this section that are sold, offered for sale, or distributed in Washington.

NEW SECTION. **Sec.**  (1)(a) Beginning January 1, 2022, a beverage manufacturer that does not meet the minimum recycled plastic content requirements pursuant to section 2 of this act is subject to an annual fee pursuant to this section. Beginning March 1, 2023, the violation level and fee must be collected annually if a waiver has not been granted pursuant to section 2(2) of this act, and calculated, based upon the amount in pounds, and in the aggregate, by which the beverage manufacturer does not meet the minimum recycled content requirements required pursuant to section 2 of this act, according to the following:

(i) If a beverage manufacturer has an overall compliance rate of at least seventy-five percent but less than one hundred percent of the minimum recycled plastic content requirements pursuant to this subsection (1)(a), that is a level one violation;

(ii) If a beverage manufacturer has an overall compliance rate of at least fifty percent but less than seventy-five percent of the minimum recycled plastic content requirements pursuant to this subsection (1)(a), that is a level two violation;

(iii) If a beverage manufacturer has an overall compliance rate of at least twenty-five percent but less than fifty percent of the minimum recycled plastic content requirements pursuant to this subsection (1)(a), that is a level three violation;

(iv) If a beverage manufacturer has an overall compliance rate of at least fifteen percent but less than twenty-five percent of the minimum recycled plastic content requirements pursuant to this subsection (1)(a), that is a level four violation; and

(v) If a beverage manufacturer has an overall compliance rate that is less than fifteen percent of the minimum recycled plastic content requirements pursuant to this subsection (1)(a), that is a level five violation.

(b) The fee amounts assessed pursuant to this subsection are as follows:

(i) For a level one violation, the fee range is five cents ($0.05) to fifteen cents ($0.15) per pound;

(ii) For a level two violation, the fee range is ten cents ($0.10) to twenty cents ($0.20) per pound;

(iii) For a level three violation, the fee range is fifteen cents ($0.15) to twenty-five cents ($0.25) per pound;

(iv) For a level four violation, the fee range is twenty cents ($0.20) to thirty cents ($0.30) per pound;

(v) For a level five violation, the fee range is twenty-five cents ($0.25) to thirty cents ($0.30) per pound.

(c) In lieu of or in addition to assessing a fee, the department of ecology may require a beverage manufacturer to submit a corrective action plan to the department detailing how the beverage manufacturer plans to come into compliance with section 2 of this act.

(d) The department of ecology may consider equitable factors in determining whether to assess a fee and the amount of the fee including, but not limited to: The nature and circumstances of the violation; actions taken by the beverage manufacturer to correct the violation; the beverage manufacturer's history of compliance; and the size and economic condition of the manufacturer.

(e) A beverage manufacturer that is assessed fees pursuant to this section may pay those fees to the department of ecology in quarterly installments or arrange an alternative payment schedule subject to the approval of the department.

(f) Fees assessed pursuant to this section may be appealed to the pollution control hearings board.

(2)(a) The department of ecology shall consider granting a waiver, reduction, or extension of the fees assessed pursuant to subsection (1) of this section for the purposes of meeting the minimum recycled content requirements required pursuant to section 2 of this act to a beverage manufacturer that has demonstrated progress toward meeting those requirements in either of the following circumstances:

(i) The beverage manufacturer has failed to meet the minimum recycled content requirements required pursuant to section 2 of this act; or

(ii) The beverage manufacturer anticipates it will not be able to meet the minimum recycled content requirements required pursuant to section 2 of this act.

(b) In determining whether to grant the waiver, reduction, or extension pursuant to this subsection (2), the department shall consider, at a minimum, all of the following:

(i) Anomalous market conditions;

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

(iii) Other factors that have prevented a beverage manufacturer from meeting the requirements.

(3) A beverage manufacturer shall pay the fees assessed pursuant to this section, as applicable, based on the information reported to the department of ecology pursuant to section 2(4) of this act in the form and manner prescribed by the department.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

Information submitted to the department of ecology under chapter 70.--- RCW (the new chapter created in section 7 of this act), that contains business trade secrets or proprietary information about manufacturing processes and equipment, is exempt from disclosure under this chapter.

NEW SECTION. **Sec.**  Sections 2 through 5 of this act constitute a new chapter in Title 70 RCW.

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