

SENATE BILL REPORT

ESHB 2722

As Reported by Senate Committee On:
Environment, Energy & Technology, February 27, 2020
Ways & Means, March 2, 2020

Title: An act relating to minimum recycled content requirements.

Brief Description: Concerning minimum recycled content requirements.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Mead, Fitzgibbon, Peterson, Doglio, Goodman, Gregerson, Slatter, Tarleton, Davis, Duerr, Ramel, Cody, Senn and Pollet).

Brief History: Passed House: 2/13/20, 64-32.

Committee Activity: Environment, Energy & Technology: 2/20/20, 2/25/20, 2/27/20 [DPA-WM, DNP].

Ways & Means: 2/29/20, 3/02/20 [DPA (ENET), DNP, w/oRec].

Brief Summary of Amended Bill

- Establishes postconsumer recycled plastic content requirements for certain beverage containers.
- Establishes fees for manufacturers of beverage containers not meeting postconsumer recycled plastic content requirements.
- Authorizes the Department of Ecology to audit reports and implement and enforce fees.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Hobbs, Liias, McCoy, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Erickson, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Brown and Short.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Muzzall, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Schoesler.

Staff: Jed Herman (786-7346)

Background: For decades, China was the largest importer of recyclable paper, plastic, and scrap metal worldwide. In 2017, China implemented its national sword policy which banned the importation of certain types of solid waste and set strict contamination limits on recyclable materials. In 2018, China officially stopped accepting shipments with mixed trash, wrong types of recyclable materials, or low-quality recyclable materials. China's ban reduced the rate of materials accepted, which created significant global repercussions for managing solid waste.

In 2019, the Legislature established the Recycling Development Center (Center) at the Department of Ecology (Ecology), in consultation with the Department of Commerce (Commerce), to facilitate research and development, marketing, and policy analysis for recycling markets and processing in Washington. The Center's efforts include determining how to overcome barriers preventing productive reuse of materials and preventing these materials from entering the waste stream. The Center also works with businesses to develop processes and methods for converting or remanufacturing waste materials into usable or marketable materials or products for use, especially those using mixed waste paper and plastics.

A tax is imposed on businesses whose products, including packaging, wrapping, and containers are reasonably related to the litter problem in the state. Types of products falling under this tax include beer, cigarettes, soft drinks, newspapers and magazines, glass containers, metal containers, and household paper and paper products. Revenues from the litter tax are allocated to Ecology. Ecology is the coordinating agency between organizations looking to assist in waste reduction, litter control, and recycling, as well as with state agencies and local governments receiving funding for litter control and recycling activities. Litter tax funds are used by Ecology to coordinate litter collection programs with state agencies. Local governments also receive funding for waste reduction, litter control, and recycling activities.

Summary of Amended Bill: Plastic Beverage Container Recycled Content Requirements.

A manufacturer of plastic beverage containers containing more than 2 fluid ounces and 1 gallon or less of certain beverages must meet recycled plastic content requirements. The beverages must be intended for human or animal consumption, offered for sale, sold or distributed into Washington, and includes:

- water or flavored water;
- beer or other malt beverages;
- wine;
- mineral water, soda water and other carbonated soft drinks; and
- any other beverage, except infant formula.

The recycled plastic content requirements do not apply to refillable plastic beverage containers, rigid plastic containers or bottles that are medical devices or products, that are required to be sterile for prescription medicine, or as packaging for these medical items, and bladders or pouches that contain wine. Ecology may exempt other beverages through rule.

Postconsumer recycled plastic content requirements are established on the total number of plastic beverage containers sold, offered for sale, or distributed in Washington by a beverage manufacturer. Plastic beverage containers must, on average, contain no less than the following postconsumer recycled plastic:

- between January 1, 2022 and December 31, 2024—10 percent;
- between January 1, 2025 and December 31, 2029—25 percent; and
- between January 1, 2030 and December 31, 2034—50 percent.

Beginning 2021, and every other year thereafter, or at the petition of a beverage manufacturing industry, Ecology must consider if the minimum recycling content requirements should be waived or reduced. Ecology must consider a petition by a beverage manufacturing industry within 60 days of receipt. If Ecology determines that the minimum recycling content requirement should be adjusted, the adjusted rate must remain in effect until a new determination is made or upon expiration of the effective date for the requirement. The minimum recycling content requirement may not be adjusted higher than the percentages provided in the act. In making a determination regarding minimum recycling content requirements, Ecology must at least consider: changes in market conditions; recycling rates; availability of suitable recycled plastics needed to meet recycled content requirements; capacity of recycling infrastructure; progress made by beverage manufacturers in achieving the minimum recycling requirement; and the carbon footprint of transporting recycled resin. A beverage manufacturer industry may appeal the decision on minimum recycling requirements to the Pollution Control Hearings Board.

Ecology may grant extensions to the recycled plastic content requirements if it determines 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.

Violations and Fees. Beginning January 1, 2023, a beverage manufacturer that does not meet the minimum recycling content requirements is subject to an annual fee. Violation levels and fees are determined by overall compliance rate calculated based on the amount in pounds and in the aggregate by which the manufacturer does not meet the minimum recycling content

requirements. A violation level and fee range is determined by a manufacturer's overall compliance rate for minimum recycled plastic content as follows:

- level one violation—75 percent, but less than 100 percent—fee of \$0.05 to \$0.15 per pound;
- level two violation—at least 50 percent, but less than 75—fee of \$0.10 to \$0.20 per pound;
- level three violation—at least 25 percent, but less than 50 percent—fee of \$0.15 to \$.25;
- level four violation—at least 15 percent, but less than 25 percent—fee of \$0.20 to \$0.30; and
- level five violation—less than 15 percent—fee \$0.25 to \$0.30 per pound.

Ecology may require a beverage manufacture to submit a corrective action plan in lieu of or in addition to assessing a fee. When determining whether to assess a fee, Ecology must consider equitable factors such as: the nature and circumstance of the violation; actions taken to correct the violation; history of compliance; size and economic condition of the manufacture; and whether conditions giving rise to the violation were due to circumstances beyond the control of the manufacturer.

Manufacturers may pay fees to Ecology in quarterly installments or arrange an alternative payment schedule. All penalties are appealable to the Pollution Control Hearings Board within 30 days of the assessment of the fee.

Reporting Requirements. On or before March 1, 2021, and annually thereafter, manufacturers of covered beverages must report to Ecology in pounds and by resin type the amount of virgin plastic and postconsumer recycled plastic used for plastic beverage containers of beverages sold, offered for sale, or distributed in Washington in the previous calendar year. The beverage manufacturer must submit this information to Ecology under penalty of perjury. Ecology must post the reported information on its website.

Enforcement. Ecology may conduct audits and inspections, and take enforcement action against a beverage manufacturer, to ensure compliance with the recycled content requirements, based on information reported by beverage manufacturers. Ecology may adopt rules as necessary to implement, administer and enforce minimum recycled content requirements.

Confidentiality of Trade Secrets and Proprietary Information. Ecology must keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment it gathers or becomes aware of through the course of conducting audits or inspections. Information submitted to Ecology containing business trade secrets or proprietary information about manufacturing processes and equipment is exempt from disclosure under the Public Records Act.

Recycling Enhancement Fee Account. The Recycling Enhancement Fee Account (Account) is created in the state treasurer. All fees collected by Ecology related to the recycled content requirements must be deposited in the Account. Money in the Account may be spent only after appropriation. Expenditures from the Account may be used by Ecology only for the Recycling Development Center.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Makes technical revisions to the Recycling Enhancement Fee Account
- Adds the authority for the Pollution Control Hearings Board to review appeals of fees and adjustments to the rates of recycled content.
- Revises the date one year forward for when manufacturers may be subject to fees.
- Makes grammatical and organizational revisions for clarity.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: There is a plastic crisis in the state and the country. Since China stopped taking our plastic recyclable materials, the problem has been exacerbated. We can be the first in the nation to enact such a bill and this can be used as a blue print to address future plastic recycling. This will create a more sustainable and resilient market for these products. Using recycled content is important to creating the market. It will also increase the value and demand of these products and ensure appropriate recycling. We have concerns about local preemption. We support the PET provisions, but the 3-7 plastics need to be addressed. In many cases, you must dispose of these plastics.

CON: Our main concern is if there will be enough supply to meet the demand required under the bill.

OTHER: We would like to wait for the recycling report that is to be completed next year. The study would provide better information regarding the availability of recyclable materials. However, we are comfortable with the language so far. We would like preemption to ensure there is no differential requirement between state and local ordinances. The new deadlines in the engrossed bill will make it easier for smaller manufacturers to come into compliance. Small bottles for wine specifically designed for airlines which makes a difference in the weight an airplane carries. This bill may cause airlines to go to bigger, heavier bottles which will create more carbon pollution.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Jared Mead, Prime Sponsor; Rory Paine-Donovan, Seattle Public Utilities; Vicki Christophersen, Washington Refuse and Recycling Association; Heather Trim, Zero Waste Washington; Julie Robertson, Department of Ecology.

CON: Ben Buchholz, Food Northwest.

OTHER: Brad Boswell, Washington Beverage Association; Mark Johnson, Washington

Retail Association; Rowland Thompson, The Wine Institute; Cliff Webster, International Bottled Water Association.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):
No one.

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means): PRO: This bill was modeled to be similar to how metal and glass material is handled. We have worked hard to gain broad consensus.

CON: The bill will be an impact to the members of my association. We recommend to let the Departments of Ecology and Commerce conclude their study first.

Persons Testifying (Ways & Means): PRO: Heather Trim, Zero Waste Washington.

CON: Ben Buchholz, Food Northwest.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.