

ESHB 2722 - S AMD

By Senator Lovelett

ADOPTED AND ENGROSSED 3/10/20

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

31 (5) The legislature encourages beverage manufacturers to use
32 plastic beverage containers that exceed the standards set forth in
33 this act.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout sections 3 through 8 of this act unless the context
3 clearly requires otherwise.

4 (1) "Beverage manufacturer" means a manufacturer of one or more
5 beverages described in section 3(1) of this act, that are sold,
6 offered for sale, or distributed in Washington.

7 (2) "Beverage manufacturing industry" means an association that
8 represents companies that manufacture beverages.

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

10 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2022, beverage
11 manufacturers that offer for sale, sell, or distribute in Washington
12 beverages, intended for human or animal consumption and in a quantity
13 more than or equal to two fluid ounces and less than or equal to one
14 gallon, must meet minimum postconsumer recycled content as required
15 under section 4 of this act, on average for the total number of
16 plastic beverage containers for the following beverages:

17 (a) Water and flavored water;

18 (b) Beer or other malt beverages;

19 (c) Wine;

20 (d) Mineral waters, soda water, and similar carbonated soft
21 drinks; and

22 (e) Any beverage other than those specified in this subsection,
23 except infant formula.

24 (2) The following containers are exempt from sections 3 through 6
25 of this act:

26 (a) Refillable plastic beverage containers;

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

30 (c) Bladders or pouches that contain wine.

31 (3) The department may adopt rules to exempt beverages.

32 NEW SECTION. **Sec. 4.** (1) Every year, a beverage manufacturer
33 must meet the following minimum postconsumer recycled plastic content
34 on average for the total number of plastic beverage containers for
35 beverages as established in section 3 of this act that are sold,
36 offered for sale, or distributed in Washington effective:

37 (a) January 1, 2022, through December 31, 2024: No less than ten
38 percent postconsumer recycled plastic;

1 (b) January 1, 2025, through December 31, 2029: No less than
2 twenty-five percent postconsumer recycled plastic;

3 (c) On and after January 1, 2030: No less than fifty percent
4 postconsumer recycled plastic.

5 (2)(a) Beginning in 2021, and every other year thereafter, or at
6 the petition of the beverage manufacturing industry but not more than
7 annually, the department shall consider whether the minimum
8 postconsumer recycled content requirements established under
9 subsection (1) of this section should be waived or reduced. The
10 department must consider a petition from the beverage manufacturing
11 industry within sixty days of receipt.

12 (b) If the department determines that a minimum postconsumer
13 recycled content requirement should be adjusted, the adjusted rate
14 must be in effect until a new determination is made or upon the
15 expiration of the minimum postconsumer recycled content requirement's
16 effective period, whichever occurs first. The department may not
17 adjust the minimum postconsumer recycled content requirements above
18 the minimum postconsumer recycled plastic content percentages, as
19 established under subsection (1) of this section. In making a
20 determination to adjust the minimum postconsumer recycled content
21 requirements the department must at least consider the following:

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

25 (ii) Recycling rates;

26 (iii) The availability of recycled plastic suitable to meet the
27 minimum postconsumer recycled content requirements, including the
28 availability of high quality recycled plastic, and food grade
29 recycled plastic from beverage container recycling programs;

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

31 (v) The progress made by beverage manufacturers in meeting the
32 requirements of this section; and

33 (vi) The carbon footprint of the transportation of the recycled
34 resin.

35 (3) The beverage manufacturing industry or a beverage
36 manufacturer may appeal adjustments to the requirement for minimum
37 postconsumer recycled content as determined under subsection (1) of
38 this section to the pollution control hearings board within thirty
39 days of the department's determination.

1 (4) The department may grant extensions of time for beverage
2 manufacturers to meet the minimum postconsumer recycled plastic
3 content requirements established under subsection (1) of this section
4 if the department determines that a beverage manufacturer has made a
5 substantial effort but has failed to meet the minimum recycled
6 plastic content requirements due to extenuating circumstances beyond
7 the beverage manufacturer's control.

8 (5) A beverage manufacturer that does not meet the minimum
9 postconsumer recycled plastic content requirements established in
10 subsection (1) of this section is subject to a fee established in
11 section 6 of this act.

12 NEW SECTION. **Sec. 5.** (1)(a) On or before March 1, 2022, and
13 annually thereafter, a beverage manufacturer, under penalty of
14 perjury, must report to the department, in pounds and by resin type,
15 the amount of virgin plastic and postconsumer recycled plastic used
16 for plastic beverage containers containing a beverage as established
17 under section 3 of this act sold, offered for sale, or distributed in
18 Washington in the previous calendar year.

19 (b) The department must post the information reported under this
20 subsection on its web site.

21 (2) The department may: (a) Conduct audits and investigations for
22 the purpose of ensuring compliance with this section based on the
23 information reported under subsection (1) of this section; and (b)
24 adopt rules to implement, administer, and enforce the requirements of
25 this act.

26 (3) The department shall keep confidential all business trade
27 secrets and proprietary information about manufacturing processes and
28 equipment that the department gathers or becomes aware of through the
29 course of conducting audits or investigations pursuant to this
30 chapter.

31 NEW SECTION. **Sec. 6.** (1) Beginning January 1, 2022, a beverage
32 manufacturer that does not meet the minimum postconsumer recycled
33 plastic content requirements as established under section 4 of this
34 act, based upon the amount in pounds and in the aggregate, is subject
35 to an annual fee.

36 (2) The following violation levels are based on a beverage
37 manufacturer's overall compliance rate of the minimum postconsumer
38 recycled plastic content requirements.

1 (a) Level one violation: At least seventy-five percent but less
2 than one hundred percent of the minimum recycled plastic content
3 requirements;

4 (b) Level two violation: At least fifty percent but less than
5 seventy-five percent of the minimum recycled plastic content
6 requirements;

7 (c) Level three violation: At least twenty-five percent but less
8 than fifty percent of the minimum recycled plastic content
9 requirements;

10 (d) Level four violation: At least fifteen percent but less than
11 twenty-five percent of the minimum recycled plastic content
12 requirements; and

13 (e) Level five violation: Less than fifteen percent of the
14 minimum recycled plastic content requirements.

15 (3) Beginning March 1, 2023, the department may assess fees for
16 violations as follows:

17 (a) Level one violation, the fee range is five cents to fifteen
18 cents per pound;

19 (b) Level two violation, the fee range is ten cents to twenty
20 cents per pound;

21 (c) Level three violation, the fee range is fifteen cents to
22 twenty-five cents per pound;

23 (d) Level four violation, the fee range is twenty cents to thirty
24 cents per pound;

25 (e) Level five violation, the fee range is twenty-five cents to
26 thirty cents per pound.

27 (4) In lieu of or in addition to assessing a fee under subsection
28 (3) of this section, the department may require a beverage
29 manufacturer to submit a corrective action plan detailing how the
30 beverage manufacturer plans to come into compliance with section 4 of
31 this act.

32 (5) The department shall consider equitable factors in
33 determining whether to assess a fee under subsection (3) of this
34 section and the amount of the fee including, but not limited to: The
35 nature and circumstances of the violation; actions taken by the
36 beverage manufacturer to correct the violation; the beverage
37 manufacturer's history of compliance; the size and economic condition
38 of the beverage manufacturer; and whether the violation or conditions
39 giving rise to the violation were due to circumstances beyond the
40 reasonable control of the beverage manufacturer or were otherwise

1 unavoidable under the circumstances including, but not limited to,
2 unforeseen changes in market conditions.

3 (6) A beverage manufacturer must:

4 (a) Pay to the department assessed fees in quarterly
5 installments; or

6 (b) Arrange an alternative payment schedule subject to the
7 approval of the department.

8 (7) A beverage manufacturer may appeal fees assessed under this
9 section to the pollution control hearings board within thirty days of
10 assessment.

11 (8) (a) The department shall consider waiving or reducing the fees
12 or extending the time frame for assessing fees established under
13 subsection (3) of this section for a beverage manufacturer that has
14 demonstrated progress toward meeting the minimum postconsumer
15 recycled content requirements, as established under section 4 of this
16 act, if the beverage manufacturer:

17 (i) Has failed to meet the minimum postconsumer recycled content
18 requirements; or

19 (ii) Anticipates it will not be able to meet the minimum
20 postconsumer recycled content requirements.

21 (b) In determining whether to grant a waiver of, or reduce a fee,
22 or extend the time frame for assessing a fee, the department shall
23 consider, at a minimum, all of the following:

24 (i) Anomalous market conditions;

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

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

28 (9) A beverage manufacturer shall pay the fees assessed pursuant
29 to this section, as applicable, based on the information reported to
30 the department as required under section 5(1) of this act in the form
31 and manner prescribed by the department.

32 NEW SECTION. **Sec. 7.** The recycling enhancement fee account is
33 created in the state treasury. All fees collected by the department
34 pursuant to section 6 of this act must be deposited in the account.
35 Moneys in the account may be spent only after appropriation.
36 Expenditures from the account may be used by the department only for
37 providing funding to the recycling development center created in RCW
38 70.370.030 for the purpose of furthering the development of recycling
39 infrastructure in this state.

1 NEW SECTION. **Sec. 8.** (1) A city, town, county, or municipal
2 corporation may not implement local recycled content requirements for
3 plastic beverage containers that must meet minimum postconsumer
4 recycled content as required under sections 3 and 4 of this act.

5 (2) Local laws and ordinances that are inconsistent with, more
6 restrictive than, or exceed the requirements of this act, may not be
7 enacted and are preempted.

8 NEW SECTION. **Sec. 9.** A new section is added to chapter 42.56
9 RCW to read as follows:

10 Information submitted to the department of ecology under chapter
11 70.--- RCW (the new chapter created in section 14 of this act), that
12 contains business trade secrets or proprietary information about
13 manufacturing processes and equipment, is exempt from disclosure
14 under this chapter.

15 **Sec. 10.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
16 and 2019 c 290 s 12 are each reenacted and amended to read as
17 follows:

18 (1) The hearings board shall only have jurisdiction to hear and
19 decide appeals from the following decisions of the department, the
20 director, local conservation districts, the air pollution control
21 boards or authorities as established pursuant to chapter 70.94 RCW,
22 local health departments, the department of natural resources, the
23 department of fish and wildlife, the parks and recreation commission,
24 and authorized public entities described in chapter 79.100 RCW:

25 (a) Civil penalties imposed pursuant to RCW 18.104.155,
26 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170,
27 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
28 90.56.310, 90.56.330, and 90.64.102.

29 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
30 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
31 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

32 (c) A final decision by the department or director made under
33 chapter 183, Laws of 2009.

34 (d) Except as provided in RCW 90.03.210(2), the issuance,
35 modification, or termination of any permit, certificate, or license
36 by the department or any air authority in the exercise of its
37 jurisdiction, including the issuance or termination of a waste
38 disposal permit, the denial of an application for a waste disposal

1 permit, the modification of the conditions or the terms of a waste
2 disposal permit, or a decision to approve or deny an application for
3 a solid waste permit exemption under RCW 70.95.300.

4 (e) Decisions of local health departments regarding the grant or
5 denial of solid waste permits pursuant to chapter 70.95 RCW.

6 (f) Decisions of local health departments regarding the issuance
7 and enforcement of permits to use or dispose of biosolids under RCW
8 70.95J.080.

9 (g) Decisions of the department regarding waste-derived
10 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
11 decisions of the department regarding waste-derived soil amendments
12 under RCW 70.95.205.

13 (h) Decisions of local conservation districts related to the
14 denial of approval or denial of certification of a dairy nutrient
15 management plan; conditions contained in a plan; application of any
16 dairy nutrient management practices, standards, methods, and
17 technologies to a particular dairy farm; and failure to adhere to the
18 plan review and approval timelines in RCW 90.64.026.

19 (i) Any other decision by the department or an air authority
20 which pursuant to law must be decided as an adjudicative proceeding
21 under chapter 34.05 RCW.

22 (j) Decisions of the department of natural resources, the
23 department of fish and wildlife, and the department that are
24 reviewable under chapter 76.09 RCW, and the department of natural
25 resources' appeals of county, city, or town objections under RCW
26 76.09.050(7).

27 (k) Forest health hazard orders issued by the commissioner of
28 public lands under RCW 76.06.180.

29 (l) Decisions of the department of fish and wildlife to issue,
30 deny, condition, or modify a hydraulic project approval permit under
31 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
32 comply, to issue a civil penalty, or to issue a notice of intent to
33 disapprove applications.

34 (m) Decisions of the department of natural resources that are
35 reviewable under RCW 78.44.270.

36 (n) Decisions of an authorized public entity under RCW 79.100.010
37 to take temporary possession or custody of a vessel or to contest the
38 amount of reimbursement owed that are reviewable by the hearings
39 board under RCW 79.100.120.

1 (o) Decisions of the department that are appealable under
2 sections 4 and 6 of this act, to set recycled minimum postconsumer
3 content for plastic beverage containers and to assess fees.

4 (2) The following hearings shall not be conducted by the hearings
5 board:

6 (a) Hearings required by law to be conducted by the shorelines
7 hearings board pursuant to chapter 90.58 RCW.

8 (b) Hearings conducted by the department pursuant to RCW
9 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
10 90.44.180.

11 (c) Appeals of decisions by the department under RCW 90.03.110
12 and 90.44.220.

13 (d) Hearings conducted by the department to adopt, modify, or
14 repeal rules.

15 (3) Review of rules and regulations adopted by the hearings board
16 shall be subject to review in accordance with the provisions of the
17 administrative procedure act, chapter 34.05 RCW.

18 **Sec. 11.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
19 and 2019 c 290 s 12 are each reenacted and amended to read as
20 follows:

21 (1) The hearings board shall only have jurisdiction to hear and
22 decide appeals from the following decisions of the department, the
23 director, local conservation districts, the air pollution control
24 boards or authorities as established pursuant to chapter 70.94 RCW,
25 local health departments, the department of natural resources, the
26 department of fish and wildlife, the parks and recreation commission,
27 and authorized public entities described in chapter 79.100 RCW:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155,
29 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170,
30 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
31 90.56.310, 90.56.330, and 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
33 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
34 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license
37 by the department or any air authority in the exercise of its
38 jurisdiction, including the issuance or termination of a waste
39 disposal permit, the denial of an application for a waste disposal

1 permit, the modification of the conditions or the terms of a waste
2 disposal permit, or a decision to approve or deny an application for
3 a solid waste permit exemption under RCW 70.95.300.

4 (d) Decisions of local health departments regarding the grant or
5 denial of solid waste permits pursuant to chapter 70.95 RCW.

6 (e) Decisions of local health departments regarding the issuance
7 and enforcement of permits to use or dispose of biosolids under RCW
8 70.95J.080.

9 (f) Decisions of the department regarding waste-derived
10 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
11 decisions of the department regarding waste-derived soil amendments
12 under RCW 70.95.205.

13 (g) Decisions of local conservation districts related to the
14 denial of approval or denial of certification of a dairy nutrient
15 management plan; conditions contained in a plan; application of any
16 dairy nutrient management practices, standards, methods, and
17 technologies to a particular dairy farm; and failure to adhere to the
18 plan review and approval timelines in RCW 90.64.026.

19 (h) Any other decision by the department or an air authority
20 which pursuant to law must be decided as an adjudicative proceeding
21 under chapter 34.05 RCW.

22 (i) Decisions of the department of natural resources, the
23 department of fish and wildlife, and the department that are
24 reviewable under chapter 76.09 RCW, and the department of natural
25 resources' appeals of county, city, or town objections under RCW
26 76.09.050(7).

27 (j) Forest health hazard orders issued by the commissioner of
28 public lands under RCW 76.06.180.

29 (k) Decisions of the department of fish and wildlife to issue,
30 deny, condition, or modify a hydraulic project approval permit under
31 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
32 comply, to issue a civil penalty, or to issue a notice of intent to
33 disapprove applications.

34 (l) Decisions of the department of natural resources that are
35 reviewable under RCW 78.44.270.

36 (m) Decisions of an authorized public entity under RCW 79.100.010
37 to take temporary possession or custody of a vessel or to contest the
38 amount of reimbursement owed that are reviewable by the hearings
39 board under RCW 79.100.120.

1 (n) Decisions of the department that are appealable under
2 sections 4 and 6 of this act, to set recycled minimum postconsumer
3 content for plastic beverage containers and to assess fees.

4 (2) The following hearings shall not be conducted by the hearings
5 board:

6 (a) Hearings required by law to be conducted by the shorelines
7 hearings board pursuant to chapter 90.58 RCW.

8 (b) Hearings conducted by the department pursuant to RCW
9 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
10 90.44.180.

11 (c) Appeals of decisions by the department under RCW 90.03.110
12 and 90.44.220.

13 (d) Hearings conducted by the department to adopt, modify, or
14 repeal rules.

15 (3) Review of rules and regulations adopted by the hearings board
16 shall be subject to review in accordance with the provisions of the
17 administrative procedure act, chapter 34.05 RCW.

18 NEW SECTION. Sec. 12. Section 10 of this act expires June 30,
19 2021.

20 NEW SECTION. Sec. 13. Section 11 of this act takes effect June
21 30, 2021.

22 NEW SECTION. Sec. 14. Sections 2 through 8 of this act
23 constitute a new chapter in Title 70 RCW."

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By Senator Lovelett

ADOPTED 3/10/20

24 On page 1, line 1 of the title, after "requirements;" strike the
25 remainder of the title and insert "reenacting and amending RCW
26 43.21B.110 and 43.21B.110; adding a new section to chapter 42.56 RCW;
27 adding a new chapter to Title 70 RCW; creating a new section;
28 prescribing penalties; providing an effective date; and providing an
29 expiration date."

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