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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)

READ FIRST TIME 02/07/20.

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

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

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

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

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

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

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires  
15 otherwise.

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

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

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

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

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

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

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

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

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

11 (a) Plastic; or

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

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

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

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

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

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

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

39 (11) "Retail establishment" means any person, corporation,  
40 partnership, business, facility, vendor, organization, or individual

1 that sells or provides merchandise, goods, or materials directly to a  
2 customer, including to a food service business. "Retail  
3 establishment" includes, but is not limited to, food service  
4 businesses, grocery stores, department stores, hardware stores, home  
5 delivery services, pharmacies, liquor stores, restaurants, catering  
6 trucks, convenience stores, or other retail stores or vendors,  
7 including temporary stores or vendors at farmers markets, street  
8 fairs, and festivals.

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

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

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

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

- 24 (a) Utensils;
- 25 (b) Straws; and
- 26 (c) Condiment packaging.

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

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

37 (b) Single-use utensils provided by a food service business for  
38 use by customers may not be bundled or packaged in plastic in such a  
39 way that a customer is unable to take only the type of utensil or

1 utensils desired without also taking a different type or types of  
2 utensil.

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

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

11 NEW SECTION. **Sec. 4.** (1)(a) Beginning October 1, 2021, and each  
12 October 1st through 2029, the department must determine which  
13 counties and any cities preparing independent solid waste management  
14 plans are serviced by solid waste facilities that provide for the  
15 composting of compostable food service products.

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

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

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

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

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

5 (A) Clear plastic food wrap and shrink wrap;

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

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

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

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

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

22 (b) A retail establishment may sell or provide:

23 (i) Durable, reusable food service products;

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

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

29 (iv) Prepackaged foods in plastic packaging; and

30 (v) Compostable food service products that the department has  
31 verified as free of per and poly fluoroalkyl substances under chapter  
32 70.95G RCW.

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

1 (5) This section expires January 1, 2030.

2 NEW SECTION. **Sec. 5.** (1) The department must review the  
3 availability of compostable alternatives to the categories of food  
4 service products specified in section 4(3)(b) of this act by July 1,  
5 2022. Upon review, if the department determines that at least two  
6 suitable and readily available alternatives exist and at least two  
7 vendors make a suitable alternative for a category of food service  
8 product commercially available, the department must establish a  
9 delayed effective date of four hundred eighty-five days after such a  
10 determination for each category of food service product. If the  
11 department does not make a determination to establish a delayed  
12 effective date by July 1, 2022, for one or more categories of food  
13 service products, by each July 1st thereafter the department must  
14 annually review and make a determination whether to establish a  
15 deadline extension date for each category of food service products  
16 for which no deadline has yet been established. In making a  
17 determination under this subsection, the department must give  
18 consideration to information provided by retail establishments.

19 (2) This section expires January 1, 2030.

20 NEW SECTION. **Sec. 6.** (1) Upon application, the department may  
21 grant a waiver from the requirements of sections 4 and 7 of this act  
22 for specific categories of food service products. A waiver granted  
23 under this section may be of a duration of up to one year and may be  
24 renewed by the department upon expiration. A waiver granted by the  
25 department may apply to the applicant, statewide, or under specified  
26 circumstances identified by the department. The department may only  
27 grant a waiver under this section when the department determines,  
28 with consideration to evidence supplied by the applicant, that:

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

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

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

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

1        NEW SECTION.    **Sec. 7.**    (1) Beginning January 1, 2030, retail  
2 establishments may not sell or provide food for consumption on or off  
3 the premises in or with a plastic food service product.

4        (2) Retail establishments may sell or provide:

5        (a) Food in compostable food service products;

6        (b) Durable, reusable food service products;

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

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

12        (e) Prepackaged foods in plastic packaging; and

13        (f) Compostable food service products that the department has  
14 verified as free of per and poly fluoroalkyl substances under chapter  
15 70.95G RCW.

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

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

24        NEW SECTION.    **Sec. 8.**    (1) The department must establish a  
25 single-use food service product fee per item sold by a producer to a  
26 customer for final sale in Washington beginning January 1, 2022. The  
27 amount of the fees established by the department are as follows:

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

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

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

37        (3) Beginning January 1, 2030, the department must annually  
38 adjust the fees in subsection (1) of this section for inflation based  
39 on the consumer price index for all urban consumers applicable to the



1 area encompassing the city of Seattle, as calculated by the United  
2 States bureau of labor statistics.

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

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

12 NEW SECTION. **Sec. 9.** (1)(a) Except as provided in (b) of this  
13 subsection, a retail establishment in violation of this chapter is  
14 subject to a fine of up to five thousand dollars per violation.

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

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

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

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

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

1        NEW SECTION.    **Sec. 10.**    (1) Beginning July 1, 2020, a city, town,  
2 county, or municipal corporation may not enact an ordinance to reduce  
3 pollution from single-use plastic food service products by requiring  
4 a request of plastic food service products by the customer of the  
5 food service business or other retail establishment.

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

9        NEW SECTION.    **Sec. 11.**    The plastic waste reduction account is  
10 created in the state treasury. All receipts from fees and penalties  
11 collected under this chapter must be deposited in the account. Moneys  
12 in the account may be spent only after appropriation. Expenditures  
13 from the account may be used only for administering, implementing,  
14 and enforcing the requirements of this chapter and for the state and  
15 local programs authorized for expenditures in RCW 70.105D.190(2) (b)  
16 and (e), including for the development of local solid waste  
17 management plans components required by RCW 70.95.080(3) and for the  
18 development of plans and infrastructure to support the statewide  
19 provision of composting infrastructure by a target date of 2027.

20        NEW SECTION.    **Sec. 12.**    Nothing in this chapter changes or limits  
21 the authority of the Washington utilities and transportation  
22 commission to regulate collection of solid waste, including curbside  
23 collection of residential recyclable materials, nor does this chapter  
24 change or limit the authority of a city or town to provide the  
25 service itself or by contract under RCW 81.77.020.

26        NEW SECTION.    **Sec. 13.**    By November 1st of every even-numbered  
27 year, beginning in 2022, the department must submit a report to the  
28 legislature that:

29        (1) Addresses the status of composting infrastructure available  
30 to serve local jurisdictions across Washington in preparation for the  
31 2030 statewide restrictions on plastic food service products, relying  
32 upon information included in local solid waste management plans under  
33 RCW 70.95.080(3); and

34        (2) Assesses whether an update to the definition of "compostable"  
35 used in section 2 of this act would be beneficial in ensuring that a  
36 statewide standard applicable to compostable products also ensures

1 that these products may be composted and managed appropriately by  
2 facilities that receive them.

3 **Sec. 14.** RCW 70.95.080 and 2010 c 154 s 2 are each amended to  
4 read as follows:

5 (1) Each county within the state, in cooperation with the various  
6 cities located within such county, shall prepare a coordinated,  
7 comprehensive solid waste management plan. Such plan may cover two or  
8 more counties. The purpose is to plan for solid waste and materials  
9 reduction, collection, and handling and management services and  
10 programs throughout the state, as designed to meet the unique needs  
11 of each county and city in the state. When updating a solid waste  
12 management plan developed under this chapter, after June 10, ((2010))  
13 2020, local comprehensive plans must consider and plan for the  
14 following handling methods or services:

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

17 (b) Collection of source separated materials;

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

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

22 (e) Handling and proper disposal of nonrecyclable wastes.

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

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

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

32 (c) Recoverable paper products for recycling;

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

34 (e) Waste reduction strategies.

35 (3) When updating a solid waste management plan developed under  
36 this chapter after June 10, 2020, each local plan must include an  
37 assessment of the logistical and economic feasibility of the  
38 development and use of infrastructure, including appropriate  
39 collection services for residential and commercial solid waste

1 customers, that would allow for the widespread commercial composting  
2 of organic materials, including compostable food service products as  
3 defined in section 2 of this act, generated in the jurisdiction by a  
4 target deadline of 2030. Adequate funding that does not require local  
5 matching funds must be provided to each county to meet the  
6 requirements of this subsection at least one year prior to each  
7 county's required update as defined in RCW 70.95.110 or the  
8 requirement in this subsection is null and void.

9 (4) Each city shall:

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

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

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

18 ~~((4))~~ (5) Two or more cities may prepare a plan for inclusion  
19 in the county plan. With prior notification of its home county of its  
20 intent, a city in one county may enter into an agreement with a city  
21 in an adjoining county, or with an adjoining county, or both, to  
22 prepare a joint plan for solid waste management to become part of the  
23 comprehensive plan of both counties.

24 ~~((5))~~ (6) After consultation with representatives of the cities  
25 and counties, the department shall establish a schedule for the  
26 development of the comprehensive plans for solid waste management. In  
27 preparing such a schedule, the department shall take into account the  
28 probable cost of such plans to the cities and counties.

29 ~~((6))~~ (7) Local governments shall not be required to include a  
30 hazardous waste element in their solid waste management plans.

31 NEW SECTION. Sec. 15. Section 7 of this act takes effect  
32 January 1, 2030.

33 NEW SECTION. Sec. 16. Sections 1 through 13 of this act  
34 constitute a new chapter in Title 70 RCW.

35 NEW SECTION. Sec. 17. If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

--- **END** ---