**2722-S.E AMS ENGR S7627.E - NOT FOR FLOOR USE**

**ESHB 2722** - S AMD

By Senator Lovelett

**ADOPTED AND ENGROSSED 3/10/20**

Strike everything after the enacting clause and insert the following:

"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 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 act 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.

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

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

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

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

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

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

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine;

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

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

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

(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; and

(c) Bladders or pouches that contain wine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department 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 investigations pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The department shall consider equitable factors in determining whether to assess a fee under subsection (3) of this section 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; the size and economic condition of the beverage manufacturer; and whether the violation or conditions giving rise to the violation were due to circumstances beyond the reasonable control of the beverage manufacturer or were otherwise unavoidable under the circumstances including, but not limited to, unforeseen changes in market conditions.

(6) A beverage manufacturer must:

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

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

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

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

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

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

(b) In determining whether to grant a waiver of, or reduce a fee, or extend the time frame for assessing a fee, 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.

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

NEW SECTION. **Sec.**  The recycling enhancement fee account is created in the state treasury. All fees collected by the department pursuant to section 6 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 only for providing funding to the recycling development center created in RCW 70.370.030 for the purpose of furthering the development of recycling infrastructure in this state.

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

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

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 14 of this act), that contains business trade secrets or proprietary information about manufacturing processes and equipment, is exempt from disclosure under this chapter.

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

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

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

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

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

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  Section 10 of this act expires June 30, 2021.

NEW SECTION. **Sec.**  Section 11 of this act takes effect June 30, 2021.

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

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By Senator Lovelett

**ADOPTED 3/10/20**

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