

**SHB 2722 - H AMD 1223**

By Representative Mead

**ADOPTED 02/13/2020**

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 and glass bottles can be recycled and can contain  
19 recycled content in order to close the loop in the recycling stream.  
20 Many companies have already taken the initiative at closing the loop  
21 by 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 chapter are reasonable and  
28 are 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.**        (1)(a) Between January 1, 2022, and  
2 December 31, 2024, inclusive, the total number of plastic beverage  
3 containers filled with a beverage described in section 4 of this act  
4 that are sold, offered for sale, or distributed in Washington by a  
5 beverage manufacturer must contain no less than ten percent  
6 postconsumer recycled plastic per year.

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

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

18        (2)(a) Every other year, beginning in 2021, or at the petition of  
19 the beverage manufacturing industry not more than annually, the  
20 director of the department of ecology shall consider whether the  
21 minimum recycled content requirements required pursuant to subsection  
22 (1) of this section should be waived or reduced. If the director of  
23 the department of ecology receives a petition from the beverage  
24 manufacturing industry, the director shall consider the petition  
25 within sixty days. If the director of the department of ecology makes  
26 a finding that a minimum recycled content requirement pursuant to  
27 this section should be adjusted, the adjusted rate for the  
28 requirement must be in effect until a new determination for the  
29 requirement is made or upon the expiration of the requirement's  
30 effective period, whichever occurs first. The director of the  
31 department of ecology may not adjust the minimum recycled content  
32 requirements above the minimum postconsumer recycled plastic content  
33 percentages required pursuant to subsection (1) of this section. In  
34 making a determination pursuant to this subsection, the director of  
35 the department of ecology shall consider, at a minimum, all of the  
36 following:

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

40        (ii) Recycling rates;

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

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

7 (v) The progress made by beverage manufacturers in achieving the  
8 goals of this section; and

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

11 (b) The beverage manufacturing industry or a beverage  
12 manufacturer may appeal the director of ecology's decision made  
13 pursuant to this subsection to the pollution control hearings board  
14 within thirty days of the director's decision.

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

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

25 (4) (a) On or before March 1, 2022, and annually thereafter, a  
26 beverage manufacturer of a beverage described in section 4 of this  
27 act sold in a plastic beverage container described in section 4 of  
28 this act must report to the department of ecology in pounds and by  
29 resin type the amount of virgin plastic and postconsumer recycled  
30 plastic used by the beverage manufacturer for plastic beverage  
31 containers containing a beverage described in section 4 of this act  
32 sold, offered for sale, or distributed in Washington in the previous  
33 calendar year. The beverage manufacturer shall submit this  
34 information to the department of ecology under penalty of perjury.

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

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

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

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

11 (8) This section does not apply to:

12 (a) Refillable plastic beverage containers;

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

16 (c) Bladders or pouches that contain wine.

17 NEW SECTION. **Sec. 3.** The recycling enhancement fee account is  
18 created in the custody of the state treasurer. All fees collected by  
19 the department of ecology pursuant to section 2 of this act must be  
20 deposited in the account. Moneys in the account may be spent only  
21 after appropriation. Expenditures from the account may be used by the  
22 department of ecology only for providing funding to the recycling  
23 development center created in RCW 70.370.030 for the purpose of  
24 furthering the development of recycling infrastructure in this state.

25 NEW SECTION. **Sec. 4.** (1) This section and sections 2, 3, and 5  
26 of this act apply only to any individual, separate, sealed plastic  
27 bottle that contains the following beverages, intended for human or  
28 animal consumption and in a quantity less than or equal to one  
29 gallon, offered for sale, sold, or distributed in Washington:

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

32 (i) Water and flavored water;

33 (ii) Beer or other malt beverages;

34 (iii) Wine; and

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

37 (b) Any beverage other than those specified in (a) of this  
38 subsection that is intended for human or animal consumption and is in

1 a quantity more than or equal to two fluid ounces and less than or  
2 equal to one gallon, except infant formula or any other exemptions  
3 adopted by the department of ecology by rule.

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

8 NEW SECTION. **Sec. 5.** (1)(a) Beginning January 1, 2022, a  
9 beverage manufacturer that does not meet the minimum recycled plastic  
10 content requirements pursuant to section 2 of this act is subject to  
11 an annual fee pursuant to this section. Beginning March 1, 2023, the  
12 violation level and fee must be collected annually if a waiver has  
13 not been granted pursuant to section 2(2) of this act, and  
14 calculated, based upon the amount in pounds, and in the aggregate, by  
15 which the beverage manufacturer does not meet the minimum recycled  
16 content requirements required pursuant to section 2 of this act,  
17 according to the following:

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

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

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

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

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

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

1 (i) For a level one violation, the fee range is five cents  
2 (\$0.05) to fifteen cents (\$0.15) per pound;

3 (ii) For a level two violation, the fee range is ten cents  
4 (\$0.10) to twenty cents (\$0.20) per pound;

5 (iii) For a level three violation, the fee range is fifteen cents  
6 (\$0.15) to twenty-five cents (\$0.25) per pound;

7 (iv) For a level four violation, the fee range is twenty cents  
8 (\$0.20) to thirty cents (\$0.30) per pound;

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

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

15 (d) The department of ecology shall consider equitable factors in  
16 determining whether to assess a fee and the amount of the fee  
17 including, but not limited to: The nature and circumstances of the  
18 violation; actions taken by the beverage manufacturer to correct the  
19 violation; the beverage manufacturer's history of compliance; the  
20 size and economic condition of the manufacturer; and whether the  
21 violation or conditions giving rise to the violation were due to  
22 circumstances beyond the reasonable control of the beverage  
23 manufacturer or were otherwise unavoidable under the circumstances  
24 including, but not limited to, unforeseen changes in market  
25 conditions.

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

30 (f) A beverage manufacturer that has been assessed fees pursuant  
31 to this section may appeal the assessment of fees to the pollution  
32 control hearings board within thirty days of the assessment.

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

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

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

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

10 (i) Anomalous market conditions;

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

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

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

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.56  
19 RCW to read as follows:

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

25 NEW SECTION. **Sec. 7.** Sections 2 through 5 of this act  
26 constitute a new chapter in Title 70 RCW."

27 Correct the title.

EFFECT: Changes the initial effective date of the recycled  
content requirements from January 1, 2021, to January 1, 2022.

Modifies the frequency of the Department of Ecology's (Ecology's)  
review of recycled content requirements to every other year, or at  
the petition of the beverage manufacturing industry not more than  
annually.

Adds, to the list of factors that Ecology must consider in its  
review of recycled content requirements, the carbon footprint of the  
transportation of the recycled resin.

Modifies the period of time in which certain decisions made by  
Ecology may be appealed to the Pollution Control Hearings Board, from  
45 days to 30 days.

Changes the initial date by which beverage manufacturers must report certain information related to the types of plastic used for beverage containers, from March 21, 2021, to March 1, 2022.

Modifies the scope of permissible uses of funds in the Recycling Fee Enhancement Account.

Narrows the scope of plastic beverage containers subject to recycled content requirements.

Provides that Ecology must, rather than may, consider certain equitable factors in determining whether to assess a fee against a beverage manufacturer.

Expands the scope of equitable factors that Ecology must consider in determining whether to assess a fee against a beverage manufacturer, to include 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.

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