

# HOUSE BILL REPORT

## ESHB 2722

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### As Passed Legislature

**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, Walen, Cody, Senn and Pollet).

#### **Brief History:**

##### **Committee Activity:**

Environment & Energy: 1/30/20, 2/3/20, 2/6/20 [DPS].

##### **Floor Activity:**

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

Senate Amended.

Passed Senate: 3/5/20, 30-19.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 3/10/20, 28-21.

House Concurred.

Passed House: 3/11/20, 57-40.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Establishes minimum postconsumer recycled content requirements for plastic containers of certain beverages sold, offered for sale, or distributed in Washington.
- Requires beverage manufacturers to annually report the type and amount of virgin plastic and postconsumer recycled plastic used for plastic beverage containers containing certain beverages sold, offered for sale, or distributed in Washington.
- Establishes fees for beverage manufacturers who fail to meet minimum postconsumer recycled content requirements.

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*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.*

- Directs the Department of Ecology to consider equitable factors in determining whether to assess a fee and the amount of the fee.
- Prohibits local governments from implementing local recycled content requirements for plastic beverage containers.

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## HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Boehnke, Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

**Minority Report:** Do not pass. Signed by 1 member: Representative Dye, Assistant Ranking Minority Member.

**Staff:** Robert Hatfield (786-7117).

### **Background:**

#### Recycling – Roles of the Department of Ecology.

The Recycling Development Center (Center) within the Department of Ecology (Ecology) is directed to further the development of markets and processing for recycled commodities and products. Toward these ends, the Center must provide or facilitate research and development, marketing, and policy analysis and must initially direct its services to businesses that turn waste materials into usable or marketable products.

Ecology is required to evaluate the amount and types of packaging produced in and sold into Washington and the management and disposal of plastic packaging. By October 31, 2020, Ecology must submit a report to the Legislature that includes an assessment, compilation, or review of specified factors, including the amounts and types of plastic packaging coming into Washington by category. Ecology's report to the Legislature on the evaluation and assessment must include findings regarding the amount and types of plastic packaging and recommendations to meet plastic packaging reduction goals through industry initiatives or product stewardship programs, or both.

#### Waste Reduction, Recycling, and Litter Control Act.

The Waste Reduction, Recycling, and Litter Control Act (Act), dating to 1971, prohibits littering and establishes statewide programs to prevent and clean up litter, reduce waste, and increase recycling. These programs are funded by the 0.015 percent litter tax on manufacturers', wholesalers', and retailers' gross proceeds on 13 categories of consumer products. The programs funded by the litter tax under the Act include litter collection efforts by state agencies, including Ecology, and state assistance of local government waste reduction, composting, and recycling programs.

### **Summary of Engrossed Substitute Bill:**

Beginning January 1, 2022, beverage manufacturers that offer for sale, sell, or distribute in Washington beverages that are intended for human or animal consumption and in a quantity more than or equal to 2 fluid ounces and less than or equal to 1 gallon must meet minimum postconsumer recycled content requirements for plastic beverage containers that contain the following beverages:

- water and flavored water;
- beer or other malt beverages;
- wine;
- mineral waters, soda water, and similar carbonated soft drinks; and
- any beverage other than those specified above except infant formula.

The following containers are exempt from the minimum postconsumer recycled content requirements:

- refillable plastic beverage containers;
- 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
- bladders or pouches that contain wine.

Every year, a beverage manufacturer must meet the following minimum postconsumer recycled plastic content requirements on average for the total number of plastic beverage containers for covered beverages sold, offered for sale, or distributed in Washington:

- January 1, 2022, through December 31, 2024: no less than 10 percent postconsumer recycled plastic;
- January 1, 2025, through December 31, 2029: no less than 25 percent postconsumer recycled plastic;
- on and after January 1, 2030: no less than 50 percent postconsumer recycled plastic.

Every other year beginning in 2021, or at the petition of the beverage manufacturing industry not more than annually, the Department of Ecology (Ecology) must consider whether the minimum recycled content requirements should be waived or reduced. If Ecology makes a finding that a minimum recycled content requirement should be adjusted, the adjusted rate for the requirement must be in effect until a new determination for the requirement is made or upon the expiration of the requirement's effective period, whichever occurs first. In making this determination, Ecology is required to consider certain factors, including:

- changes in market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability;
- the availability of recycled plastic suitable to meet the minimum recycled content requirements; and
- the carbon footprint of the transportation of the recycled resin.

The beverage manufacturing industry or a beverage manufacturer may appeal Ecology's decision to the Pollution Control Hearings Board within 30 days of Ecology's decision. Ecology may grant extensions to the minimum recycled plastic content requirements if Ecology makes a finding that 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.

On or before March 1, 2022, and annually thereafter, a beverage manufacturer of a covered beverage sold in a covered container must report to Ecology, in pounds and by resin type, the amount of virgin plastic and postconsumer recycled plastic used by the beverage manufacturer for plastic beverage containers containing a covered beverage sold, offered for sale, or distributed in Washington in the previous calendar year. Ecology must post this information on its website.

Ecology may conduct audits and investigations for the purpose of ensuring compliance with the reporting requirements. Ecology may also adopt rules to implement, administer, and enforce the minimum postconsumer recycled content requirements.

Ecology must keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment that Ecology gathers or becomes aware of through the course of conducting audits or inspections. Information that contains business trade secrets or proprietary information about manufacturing processes and equipment is exempt from disclosure under the Public Records Act.

Beginning January 1, 2022, a beverage manufacturer that does not meet the minimum recycled plastic content requirements is subject to an annual fee. Beginning March 1, 2023, the violation level and fee must be collected annually if a waiver has not been granted. Fees assessed by Ecology may be appealed to the Pollution Control Hearings Board. The fee must be calculated based upon the amount in pounds, and in the aggregate, by which the beverage manufacturer does not meet the minimum recycled content requirements, according to the following schedule:

- If a beverage manufacturer has an overall compliance rate of at least 75 percent but less than 100 percent of the minimum recycled plastic content requirements, the fee range is 5 cents to 15 cents per pound.
- For an overall compliance rate of at least 50 percent but less than 75 percent, the fee range is 10 cents to 20 cents per pound.
- For an overall compliance rate of at least 25 percent but less than 50 percent, the fee range is 15 cents to 25 cents per pound.
- For an overall compliance rate of at least 15 percent but less than 25 percent, the fee range is 20 cents to 30 cents per pound.
- For an overall compliance rate that is less than 15 percent, the fee range is 25 cents to 30 cents per pound.

In lieu of, or in addition to, assessing a fee, Ecology may require a beverage manufacturer to submit a corrective action plan to Ecology detailing how the beverage manufacturer plans to come into compliance with recycled content requirements.

Ecology must consider equitable factors in determining whether to assess a fee 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; and
- whether the condition giving rise to the violation were due to circumstances beyond the reasonable control of the beverage manufacturer.

Ecology must consider granting a waiver, reduction, or extension of the fees to a beverage manufacturer that has demonstrated progress toward meeting the recycled content requirements in either of the following circumstances:

- the beverage manufacturer has failed to meet the minimum recycled content requirements; or
- the beverage manufacturer anticipates it will not be able to meet the minimum recycled content requirements.

The Recycling Enhancement Fee Account (Account) is created in the custody of the State Treasurer. All fees collected by Ecology pursuant to the 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 Ecology only for providing funding to Ecology's Recycling Development Center for the purpose of furthering the development of recycling infrastructure in Washington.

A city, town, county, or municipal corporation may not implement local recycled content requirements for plastic beverage containers that are subject to the minimum postconsumer recycled content requirements of the act. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of the act may not be enacted and are preempted.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill will develop a market for recycling in Washington.

There are major beverage brands that are already using recycled content. Using recycled content is very doable. It is important to create a market for recycled content since virgin plastic is so cheap.

Plastic bottle caps are among the top five most common items recovered in beach cleanups. Incentivizing recycling helps keep plastics out of the waste stream and ensures that plastics do not end up in landfills and oceans.

Creating a strong market for recyclables would improve the viability of recycling programs. Municipal utilities take a market risk when entering into contracts for processing recyclables.

Recycled markets have been in crisis since the adoption of new policies by China. Without markets, there can be no recycling. Developing strong markets for Washington recyclables ensures the viability of the recycling system. Beverage containers are often made from number one and number two plastics, and there is already a viable market for those categories. Numbers three through seven currently lack recycled markets. Recycled content

requirements for these types of resin would be helpful. Recycled content requirements are the single most impactful thing to be done to encourage and enable recycling.

(Opposed) There is opposition for this bill at this time. The starting date being only 11 months in the future is concerning. Bottle manufacturers do not know about the bill, and it would be impossible to comply with because beverage companies will not be able to get the bottles they need.

There are some concerns with the bill. It is not clear that there is enough recycled content out there to meet the demand in the bill. It would be good to do more research on the bill, in order to make sure the recycled content is there in the supply chain.

The implementation timeframe is concerning. The recycling market does not usually react to traditional supply-and-demand drivers. There need to be safeguards to protect beverage manufacturers from fluctuations in the supply of recycled content. The penalties are unreasonable and punitive and could hurt small businesses.

Some wine is sold via bladders in boxes. The bladders come in three parts and they cannot be separated from each other. The major part of the bladder is the film, which is fused together from separate materials. Bladders are not available in any way in recycled content. The proposed California recycled content bill does not include wine bladders.

(Other) The Department of Ecology is currently doing a study on plastics waste. It would be good to wait until that process plays out.

Using recycled content is an important step in closing the recycling loop. Many companies have committed to increasing recycled content. The availability of recycled content is insufficient for all manufacturers to meet the recycled content goals. There are concerns regarding the penalties and enforcement.

**Persons Testifying:** (In support) Representative Mead, prime sponsor; Neil Beaver, Recology; Heather Trim, Zero Waste Washington; Nora Nickum, Seattle Aquarium; Rory Paine-Donovan, Seattle Public Utilities; and Vicki Christophersen, Washington Refuse and Recycling Association.

(Opposed) Ross Rosette, H2Oregon; Tim Dougherty, Northwest Bottled Water Association; Cory Martin, International Bottled Water Association; and Rowland Thompson, The Wine Institute.

(Other) Brad Boswell, Washington Beverage Association; Mark Johnson, Washington Retail Association; and Julie Robertson, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.