
SUBSTITUTE HOUSE BILL 2722

State of Washington

66th Legislature

2020 Regular Session

By House Environment & Energy (originally sponsored by Representatives Mead, Fitzgibbon, Peterson, Doglio, Goodman, Gregerson, Slatter, Tarleton, Davis, Duerr, Ramel, Walen, Cody, Senn, and Pollet)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to minimum recycled content requirements; adding
2 a new section to chapter 42.56 RCW; adding a new chapter to Title 70
3 RCW; creating a new section; and prescribing penalties.

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

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

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

20 (3) Plastic and glass bottles can be recycled and can contain
21 recycled content in order to close the loop in the recycling stream.

1 Many companies have already taken the initiative at closing the loop
2 by using plastic bottles that contain one hundred percent recycled
3 content. Since November 2010, one national juice company has been
4 using bottles made with one hundred percent postconsumer recycled
5 content for all of its juices and juice smoothies. In January 2018,
6 an international beverage producer announced that it will make all
7 its bottles from one hundred percent recycled plastic by 2025.

8 (4) The requirements imposed by this chapter are reasonable and
9 are achievable at minimal cost relative to the burden imposed by the
10 continued excessive use of virgin materials in beverage containers in
11 Washington.

12 NEW SECTION. **Sec. 2.** (1)(a) Between January 1, 2021, and
13 December 31, 2024, inclusive, the total number of plastic beverage
14 containers filled with a beverage described in section 4 of this act
15 that are sold, offered for sale, or distributed in Washington by a
16 beverage manufacturer must contain no less than ten percent
17 postconsumer recycled plastic per year.

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

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

29 (2)(a) At least annually, or at the petition of the beverage
30 manufacturing industry not more than semiannually, the director of
31 the department of ecology shall consider whether the minimum recycled
32 content requirements required pursuant to subsection (1) of this
33 section should be waived or reduced. If the director of the
34 department of ecology receives a petition from the beverage
35 manufacturing industry, the director shall consider the petition
36 within sixty days. If the director of the department of ecology makes
37 a finding that a minimum recycled content requirement pursuant to
38 this section should be adjusted, the adjusted rate for the
39 requirement must be in effect until a new determination for the

1 requirement is made or upon the expiration of the requirement's
2 effective period, whichever occurs first. The director of the
3 department of ecology may not adjust the minimum recycled content
4 requirements above the minimum postconsumer recycled plastic content
5 percentages required pursuant to subsection (1) of this section. In
6 making a determination pursuant to this subsection, the director of
7 the department of ecology shall consider, at a minimum, all of the
8 following:

9 (i) Changes in market conditions, including supply and demand for
10 postconsumer recycled plastics, collection rates, and bale
11 availability;

12 (ii) Recycling rates;

13 (iii) The availability of recycled plastic suitable to meet the
14 minimum recycled content requirements pursuant to subsection (1) of
15 this section, including the availability of high quality recycled
16 plastic, and food grade recycled plastic from beverage container
17 recycling programs;

18 (iv) The capacity of recycling or processing infrastructure; and

19 (v) The progress made by beverage manufacturers in achieving the
20 goals of this section.

21 (b) The beverage manufacturing industry or a beverage
22 manufacturer may appeal the director of ecology's decision made
23 pursuant to this subsection to the pollution control hearings board
24 within forty-five days of the director's decision. An administrative
25 law judge shall hear the appeal within forty-five days of the request
26 for an appeal. The administrative law judge's review is de novo.

27 (c) For the purposes of this section, "beverage manufacturing
28 industry" means an association that represents companies that
29 manufacture beverages.

30 (3) The department of ecology may grant extensions to the minimum
31 recycled plastic content requirements required under subsection (1)
32 of this section if the department of ecology makes a finding that a
33 beverage manufacturer has made a substantial effort but has failed to
34 meet the minimum recycled plastic content requirements due to
35 extenuating circumstances that are out of the beverage manufacturer's
36 control.

37 (4) On or before March 1, 2021, and annually thereafter, a
38 beverage manufacturer of a beverage described in section 4 of this
39 act sold in a plastic beverage container described in section 4 of
40 this act must report to the department of ecology in pounds and by

1 resin type the amount of virgin plastic and postconsumer recycled
2 plastic used by the beverage manufacturer for plastic beverage
3 containers containing a beverage described in section 4 of this act
4 sold, offered for sale, or distributed in Washington in the previous
5 calendar year. The beverage manufacturer shall submit this
6 information to the department of ecology under penalty of perjury.

7 (a) The department of ecology shall post the information reported
8 under this subsection on the department's web site.

9 (b) This subsection does not apply to a refillable plastic
10 beverage container.

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

15 (6) The department of ecology may conduct audits and inspections
16 and take enforcement action pursuant to this chapter against a
17 beverage manufacturer for the purpose of ensuring compliance with
18 this section based on the information reported under subsection (4)
19 of this section.

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

25 (8) This section does not apply to:

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; or

30 (c) Bladders or pouches that contain wine.

31 (9) The legislature encourages beverage manufacturers to use
32 plastic beverage containers that contain one hundred percent recycled
33 plastic content.

34 NEW SECTION. **Sec. 3.** The recycling enhancement fee account is
35 created in the custody of the state treasurer. All fees collected by
36 the department of ecology pursuant to section 2 of this act must be
37 deposited in the account. Moneys in the account may be spent only
38 after appropriation. Expenditures from the account may be used by the
39 department of ecology only for supporting waste reduction, litter

1 collection, and the recycling, infrastructure, collection, and
2 processing of plastic beverage containers in this state.

3 NEW SECTION. **Sec. 4.** (1) This section and sections 2, 3, and 5
4 of this act apply only to any individual, separate, sealed plastic
5 bottle, bladder, or pouch, except for polycoated cartons, foil
6 pouches, and drink boxes that contain the following beverages,
7 intended for human or animal consumption and in a quantity less than
8 or equal to one gallon, offered for sale, sold, or distributed in
9 Washington:

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

- 12 (i) Water and flavored water;
- 13 (ii) Beer or other malt beverages;
- 14 (iii) Wine; and
- 15 (iv) Mineral waters, soda water, and similar carbonated soft
16 drinks;

17 (b) Any beverage other than those specified in (a) of this
18 subsection that is intended for human or animal consumption and is in
19 a quantity more than or equal to two fluid ounces and less than or
20 equal to one gallon, except infant formula or any other exemptions
21 adopted by the department of ecology by rule.

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

26 NEW SECTION. **Sec. 5.** (1)(a) Beginning January 1, 2022, a
27 beverage manufacturer that does not meet the minimum recycled plastic
28 content requirements pursuant to section 2 of this act is subject to
29 an annual fee pursuant to this section. Beginning March 1, 2023, the
30 violation level and fee must be collected annually if a waiver has
31 not been granted pursuant to section 2(2) of this act, and
32 calculated, based upon the amount in pounds, and in the aggregate, by
33 which the beverage manufacturer does not meet the minimum recycled
34 content requirements required pursuant to section 2 of this act,
35 according to the following:

36 (i) If a beverage manufacturer has an overall compliance rate of
37 at least seventy-five percent but less than one hundred percent of

1 the minimum recycled plastic content requirements pursuant to this
2 subsection (1)(a), that is a level one violation;

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

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

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

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

19 (b) The fee amounts assessed pursuant to this subsection are as
20 follows:

21 (i) For a level one violation, the fee range is five cents
22 (\$0.05) to fifteen cents (\$0.15) per pound;

23 (ii) For a level two violation, the fee range is ten cents
24 (\$0.10) to twenty cents (\$0.20) per pound;

25 (iii) For a level three violation, the fee range is fifteen cents
26 (\$0.15) to twenty-five cents (\$0.25) per pound;

27 (iv) For a level four violation, the fee range is twenty cents
28 (\$0.20) to thirty cents (\$0.30) per pound;

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

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

35 (d) The department of ecology may consider equitable factors in
36 determining whether to assess a fee and the amount of the fee
37 including, but not limited to: The nature and circumstances of the
38 violation; actions taken by the beverage manufacturer to correct the
39 violation; the beverage manufacturer's history of compliance; and the
40 size and economic condition of the manufacturer.

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

5 (f) Fees assessed pursuant to this section may be appealed to the
6 pollution control hearings board.

7 (2)(a) The department of ecology shall consider granting a
8 waiver, reduction, or extension of the fees assessed pursuant to
9 subsection (1) of this section for the purposes of meeting the
10 minimum recycled content requirements required pursuant to section 2
11 of this act to a beverage manufacturer that has demonstrated progress
12 toward meeting those requirements in either of the following
13 circumstances:

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

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

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

23 (i) Anomalous market conditions;

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

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

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

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

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

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

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