
Environment & Energy Committee

HB 2722

Brief Description: Concerning minimum recycled content requirements.

Sponsors: Representatives Mead, Fitzgibbon, Peterson, Doglio, Goodman, Gregerson, Slatter, Tarleton, Davis, Duerr, Ramel, Walen, Cody, Senn and Pollet.

Brief Summary of 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 civil penalties for beverage manufacturers who fail to meet minimum postconsumer recycled content requirements.

Hearing Date: 1/30/20

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

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.

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 initiative 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 Bill:

Plastic Beverage Container Recycled Content Requirements.

The following postconsumer recycled plastic content requirements are established for certain plastic containers ("covered containers", described below) filled with certain beverages ("covered beverages", described below) sold, offered for sale, or distributed in Washington:

- Between January 1, 2021, and December 31, 2024, the total number of plastic beverage containers filled with a covered beverage sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than 15 percent postconsumer recycled plastic;
- Between January 1, 2025, and December 31, 2029, the total number of plastic beverage containers filled with a covered beverage sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than 25 percent postconsumer recycled plastic;
- Between January 1, 2030, and December 31, 2034, the total number of plastic beverage containers filled with a covered beverage sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than 50 percent postconsumer recycled plastic; and
- On and after January 1, 2035, the total number of plastic beverage containers filled with a covered beverage sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than 75 percent postconsumer recycled plastic.

The Department of Ecology (Ecology) may grant extensions to the above requirements if Ecology 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 that are out of the beverage manufacturer's control.

Applicability of Postconsumer Recycled Plastic Content Requirements.

Covered Containers.

The recycled plastic content requirements apply to any individual, separate, sealed plastic bottle, bladder, or pouch, except for polycoated cartons, foil pouches, and drink boxes that contain the covered beverages described below, intended for human or animal consumption and in a quantity less than or equal to one gallon, offered for sale, sold, or distributed in Washington.

Covered Beverages.

The recycled plastic content requirements apply to 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 that is intended for human or animal consumption and is in a quantity more than or equal to two fluid ounces and less than or equal to one gallon, except infant formula or any other exemptions adopted by Ecology by rule.

A "beverage manufacturer" is a manufacturer of one or more beverages described above that are sold, offered for sale, or distributed in Washington.

Reporting Requirements.

Beginning March 1, 2021, and annually thereafter, manufacturers of covered beverages who use plastic containers must report to Ecology in pounds and by resin type the amount of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage containers containing covered beverages sold, offered for sale, or distributed in Washington in the previous calendar year. The beverage manufacturer must submit this information to Ecology under penalty of perjury.

Enforcement.

Ecology may conduct audits and inspections and take enforcement action against a beverage manufacturer for the purpose of ensuring compliance with the recycled content requirements, based on information reported by beverage manufacturers.

Civil Penalties.

A beverage manufacturer that does not meet the minimum recycled plastic content requirements is subject to a civil penalty according to the following schedule:

- when the manufacturer's compliance rate is at least 75 percent but less than 100 percent of the minimum recycled plastic content requirements, a civil penalty of \$0.0025 for each plastic beverage container reported;
- when the manufacturer's compliance rate is at least 50 percent but less than 75 percent of the minimum recycled plastic content requirements, a civil penalty of \$0.005 for each plastic beverage container reported;
- when the manufacturer's compliance rate is at least 25 percent but less than 50 percent of the minimum recycled plastic content requirements, a civil penalty of \$0.01 for each plastic beverage container reported;
- when the manufacturer's compliance rate is at least 15 percent but less than 25 percent of the minimum recycled plastic content requirements, a civil penalty of \$0.015 for each plastic beverage container reported; and
- when the manufacturer's compliance rate is less than 15 percent of the minimum recycled plastic content requirements, a civil penalty of \$0.02 for each plastic beverage container reported.

Civil penalties may be appealed to the Pollution Control Hearings Board pursuant to the Administrative Procedure Act.

If it is established that the actual average postconsumer recycled plastic content used by a beverage manufacturer in a given year was lower than the percentage reported by the manufacturer, the manufacturer is liable for an additional civil penalty equal to 115 percent of the difference between the beverage manufacturer's audited actual average postconsumer recycled plastic content percentage and the percentage reported by the manufacturer, multiplied by the total number of pounds of plastic used by that beverage manufacturer for covered beverage containers, multiplied by \$1.

Recycling Enhancement Penalty Account.

The Recycling Enhancement Penalty Account (Account) is created in the custody of the State Treasurer. All penalties collected by Ecology related to the recycled content requirements 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 supporting waste reduction, litter collection, and the recycling, infrastructure, collection, and processing of plastic beverage containers in Washington.

Confidentiality of Trade Secrets and Proprietary Information.

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 submitted to Ecology that contains business trade secrets or proprietary information about manufacturing processes and equipment is exempt from disclosure under the Public Records Act.

Appropriation: None.

Fiscal Note: Requested on January 21, 2020.

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