

# HOUSE BILL REPORT

## ESHB 2722

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### As Amended by the Senate

**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.

### 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.
- Directs the Department of Ecology to consider equitable factors in determining whether to assess a fee and the amount of the fee.

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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.*

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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:**

#### Plastic Beverage Container Recycled Content Requirements.

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

- Between January 1, 2022, 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 contain no less than 10 percent postconsumer recycled plastic per year.
- 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 contain no less than 25 percent postconsumer recycled plastic per year.
  - On and after January 1, 2030, 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 contain no less than 50 percent postconsumer recycled plastic per year.

#### *Covered Containers.*

The recycled plastic content requirements apply to any individual, separate, sealed plastic bottle that contains the covered beverages described below, intended for human or animal consumption and in a quantity less than or equal to 1 gallon, offered for sale, sold, or distributed in Washington. The recycled plastic requirements do not apply to refillable plastic beverage containers or rigid plastic containers or bottles that are medical devices, medical products that are required to be sterile, prescription medicine, packaging used for those products, or bladders or pouches that contain wine.

#### *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 2 fluid ounces and less than or equal to 1 gallon, except infant formula or any other exemptions adopted by the Department of Ecology (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.

#### Waivers or Reductions of Recycled Content Requirements.

Every other year beginning in 2021, or at the petition of the beverage manufacturing industry not more than annually, the Director of Ecology (Director) must consider whether the minimum recycled content requirements should be waived or reduced. If the Director 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, the Director 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 the Director's decision to the Pollution Control Hearings Board within 30 days of the Director'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.

#### Reporting.

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.

#### Enforcement.

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

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.

#### Fees.

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 shall 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 shall 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.

#### Recycling Enhancement Fee Account.

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.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes the following changes to the bill:

- A definitions section is added.
- The sections of the act are reordered.
- A section is added related to the authority of the Pollution Control Hearings Board to hear certain decisions made by the Department of Ecology concerning the enforcement of the act.
- A section is added that preempts local regulations that are stricter than or inconsistent with the requirements of the act.

**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.