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**HOUSE BILL 2656**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representatives Gregerson, Dye, Doglio, Peterson, Mead, Fitzgibbon, Thai, Senn, Goodman, Ramos, Pollet, and Macri

Read first time 01/16/20. Referred to Committee on Environment & Energy.

1 AN ACT Relating to reducing waste associated with single-use food  
2 service products; amending RCW 70.95.080; adding a new chapter to  
3 Title 70 RCW; prescribing penalties; providing an effective date; and  
4 providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that plastic  
7 products have proliferated in modern commerce. While many plastic  
8 products feature some positive environmental, economic, and  
9 logistical attributes, the costs of many plastic products, especially  
10 single-use plastic products, far outweigh their benefits. Plastic  
11 utensils, straws, cups, plates, and wrappers all frequently wind up  
12 as litter or end up polluting our marine environment. Single-use  
13 plastics break down into small, toxic pieces in the marine  
14 environment and enter the diets of fish, birds, and other organisms,  
15 where they may pose a particular burden for endangered species like  
16 salmon and southern resident killer whales. Single-use plastic food  
17 service products also contaminate our recycling and compost systems,  
18 contaminating other recyclables, such as paper, and reducing the  
19 cost-effectiveness of recycling other plastic products and  
20 jeopardizing the quality of our compost.

1 (2) Therefore, in light of the need to protect our sensitive  
2 marine environments, and with a desire to lead a transition to more  
3 environmentally sustainable alternatives, it is the intent of the  
4 legislature to:

5 (a) Phase out the use of single-use plastic food service  
6 products, and to take other steps to reduce waste from single-use  
7 food service products; and

8 (b) Through a fee on single-use plastic food service products,  
9 disincentivize the use of single-use plastic food service products  
10 prior to the effective date of restrictions and provide financial  
11 support for local governments to begin planning for a future in which  
12 all single-use food service products are compostable.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires  
15 otherwise.

16 (1) "Compostable" means a product that meets the requirements of  
17 RCW 70.360.040.

18 (2) "Condiment packaging" means plastic packaging used to deliver  
19 single-serving condiments to customers. "Condiment packaging"  
20 includes, but is not limited to, single-serving plastic packaging for  
21 ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer,  
22 salad dressing, jelly and jam, and soy sauce.

23 (3) "Department" means the department of ecology.

24 (4) "Food service businesses" means businesses selling or  
25 providing food for consumption on or off the premises, including  
26 full-service restaurants, fast food restaurants, cafes,  
27 delicatessens, coffee shops, grocery stores, vending trucks, booths,  
28 or carts, home delivery services, and business or institutional  
29 cafeterias.

30 (5) "Food service product" means a product on or in which foods  
31 or beverages are placed or packaged or are intended to be placed or  
32 packaged that are designed for one-time use. "Food service product"  
33 includes, but is not limited to, containers, plates, bowls, cups,  
34 beverage containers, bottles, lids, meat trays, deli rounds,  
35 utensils, sachets, straws, tea bags, condiment packaging, clamshells  
36 and other hinged or lidded containers, sandwich wrap, and portion  
37 cups.

38 (6) "Noncompostable" means not meeting the definition of  
39 compostable.

1 (7) "Plastic food service product" means a food service product  
2 that is composed of:

3 (a) Plastic; or

4 (b) Fiber or paper with a plastic coating, window, component, or  
5 additive.

6 (8) "Polystyrene foam food service product" means a food service  
7 product that is made of blown polystyrene or expanded or extruded  
8 foam that is a thermoplastic petrochemical material using a styrene  
9 monomer and processed by any technique.

10 (9) "Prepackaged food" means food service products that have been  
11 filled and sealed with food by a separate food service business or  
12 food manufacturer prior to receipt by the point of sale food service  
13 business.

14 (10)(a) "Producer" means a person who manufactures a single-use  
15 plastic food service product under that person's own name or brand or  
16 who sells or offers for sale the single-use food service product.

17 (b) If there is no person who is the producer of the single-use  
18 plastic food service product for purposes of (a) of this subsection,  
19 the producer is the person who imports the single-use plastic food  
20 service product as the owner or licensee of a trademark or brand  
21 under which the single-use plastic food service product is sold or  
22 distributed in the state.

23 (c) If there is no person who is the producer for purposes of (a)  
24 or (b) of this subsection, the producer is the person that offers for  
25 sale, sells, or distributes the single-use plastic food service  
26 product in the state.

27 (11) "Retail establishment" means any person, corporation,  
28 partnership, business, facility, vendor, organization, or individual  
29 that sells or provides merchandise, goods, or materials directly to a  
30 customer, including to a food service business. "Retail  
31 establishment" includes, but is not limited to, food service  
32 businesses, grocery stores, department stores, hardware stores, home  
33 delivery services, pharmacies, liquor stores, restaurants, catering  
34 trucks, convenience stores, or other retail stores or vendors,  
35 including temporary stores or vendors at farmers markets, street  
36 fairs, and festivals.

37 (12)(a) "Utensil" means a product designed to be used by a  
38 consumer to facilitate the consumption of food or beverages,  
39 including knives, forks, spoons, cocktail picks, chopsticks, splash  
40 sticks, and stirrers.

1 (b) "Utensil" does not include plates, bowls, cups, bottles, and  
2 other products used to contain food or beverages.

3 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (3)  
4 of this section, beginning January 1, 2021, a food service business  
5 at which the opportunity is provided for the on-site consumption of  
6 food or beverages may provide the following types of single-use food  
7 service products only upon the request of the consumer:

- 8 (a) Utensils;
- 9 (b) Straws; and
- 10 (c) Condiment packaging.

11 (2) A food service business at which no opportunity is provided  
12 for the on-site consumption of food or beverages or that is serving a  
13 customer via a drive-through may provide types of single-use food  
14 service products identified in subsection (1) of this section only  
15 after asking if the customer would like to obtain the single-use food  
16 service products, and the customer responds affirmatively.

17 (3)(a) A food service business may make utensils available to  
18 customers using cylinders, bins, dispensers, containers, or other  
19 means of allowing for individual single-use utensils, to be obtained  
20 at the affirmative volition of the customer.

21 (b) Single-use utensils provided by a food service business for  
22 use by customers may not be bundled or packaged in plastic in such a  
23 way that a customer is unable to take only the type of utensil or  
24 utensils desired without also taking a different type or types of  
25 utensil.

26 (4) Nothing in this section restricts the ability of a food  
27 service business to make condiments available to customers using bulk  
28 condiment dispensers, containers, or other means of allowing  
29 condiments that are not packaged in individual serving portions to be  
30 obtained at the affirmative volition of the customer.

31 NEW SECTION. **Sec. 4.** Beginning January 1, 2021, retail  
32 establishments may not sell or provide polystyrene foam food service  
33 products to a customer for use on or off premises.

34 NEW SECTION. **Sec. 5.** (1)(a) Beginning October 1, 2021, and each  
35 October 1st through 2029, the department must determine which  
36 counties and any cities preparing independent solid waste management

1 plans are serviced by solid waste facilities that provide for the  
2 composting of compostable food service products.

3 (b) The department must determine and designate that the  
4 restrictions of this section apply to retail establishments in a  
5 jurisdiction unless a county or a city preparing an independent solid  
6 waste management plan provides written notification to the department  
7 indicating that the county or city is not serviced by a solid waste  
8 facility that provides for the composting of compostable food service  
9 products.

10 (c) The restrictions of this section take effect in a county or  
11 city January 1st of the year following the determination by the  
12 department required under this section. The department must make the  
13 result of the annual determinations required under this section  
14 available on its web site.

15 (2)(a) Beginning January 1, 2022, except as provided under (b) of  
16 this subsection and section 7 of this act, retail establishments  
17 located in a jurisdiction that is serviced by solid waste facilities  
18 that provide for the composting of compostable food service products,  
19 as determined and designated under subsection (1) of this section,  
20 may not sell or provide food for consumption on or off the premises  
21 in or with plastic food service products.

22 (b)(i) Beginning July 1, 2022, retail establishments located in a  
23 jurisdiction determined and designated under subsection (1) of this  
24 section may not sell or provide food for consumption on or off the  
25 premises in or with plastic catering trays and produce bags.

26 (ii) Beginning on a date determined by the department pursuant to  
27 section 6 of this act, retail establishments located in a  
28 jurisdiction determined and designated under subsection (1) of this  
29 section may not sell or provide:

30 (A) Clear plastic food wrap and shrink wrap;

31 (B) Plastic containers for uniquely shaped foods such as deviled  
32 eggs and cupcakes;

33 (C) Flexible plastic packaging used to preserve moisture and  
34 freshness, such as for cookies; and

35 (D) Hot meat item plastic containers, such as those for ribs and  
36 rotisserie chicken.

37 (c) For all categories of plastic food service products not  
38 described in (b) of this subsection, the restrictions of this  
39 subsection take effect January 1, 2022, as provided in this  
40 subsection.

1 (3) (a) Retail establishments may sell or provide food in  
2 compostable food service products.

3 (b) A retail establishment may sell or provide:

4 (i) Durable, reusable food service products;

5 (ii) Recyclable fiber-based, glass, or metal food service  
6 products;

7 (iii) Recyclable plastic bottles and other beverage containers  
8 made from high density polyethylene (HDPE) or polyethylene  
9 terephthalate (PET);

10 (iv) Prepackaged foods in plastic packaging; and

11 (v) Compostable food service products that the department has  
12 verified as free of per and poly fluoroalkyl substances under chapter  
13 70.95G RCW.

14 (4) This section expires June 30, 2030.

15 NEW SECTION. **Sec. 6.** (1) The department must review the  
16 availability of compostable alternatives to the categories of food  
17 service products specified in section 5(3)(b) of this act by July 1,  
18 2022. Upon review, if the department determines that at least two  
19 suitable and readily available alternatives exist and at least two  
20 vendors make a suitable alternative for a category of food service  
21 product commercially available, the department must establish a  
22 delayed effective date of three hundred sixty-five days after such a  
23 determination for each category of food service product. If the  
24 department does not make a determination to establish a delayed  
25 effective date by July 1, 2022, for one or more categories of food  
26 service products, by each July 1st thereafter the department must  
27 annually review and make a determination whether to establish a  
28 deadline extension date for each category of food service products  
29 for which no deadline has yet been established. In making a  
30 determination under this subsection, the department must give  
31 consideration to information provided by retail establishments.

32 (2) This section expires June 30, 2030.

33 NEW SECTION. **Sec. 7.** (1) Upon application, the department may  
34 grant a waiver from the requirements of sections 5 and 8 of this act  
35 for specific categories of food service products. A waiver granted  
36 under this section may be of a duration of up to one year and may be  
37 renewed by the department upon expiration. A waiver granted by the  
38 department may apply to the applicant, statewide, or under specified

1 circumstances identified by the department. The department may only  
2 grant a waiver under this section when the department determines,  
3 with consideration to evidence supplied by the applicant, that:

4 (a) A category of plastic food service product restricted under  
5 this chapter does not have at least two suitable and readily  
6 commercially available alternative products;

7 (b) There are not at least two vendors that make commercially  
8 available a suitable alternative product to a category of food  
9 service product; or

10 (c) The enforcement of this chapter would cause undue hardship.

11 (2) The department must adopt rules to establish waiver  
12 guidelines, submission requirements, and renewal procedures.

13 NEW SECTION. **Sec. 8.** (1) Beginning January 1, 2030, retail  
14 establishments may not sell or provide food for consumption on or off  
15 the premises in or with a plastic food service product.

16 (2) Retail establishments may sell or provide:

17 (a) Food in compostable food service products;

18 (b) Durable, reusable food service products;

19 (c) Recyclable fiber-based, glass, or metal food service  
20 products;

21 (d) Recyclable plastic bottles and other beverage containers made  
22 from high density polyethylene (HDPE) or polyethylene terephthalate  
23 (PET);

24 (e) Prepackaged foods in plastic packaging; and

25 (f) Compostable food service products that the department has  
26 verified as free of per and poly fluoroalkyl substances under chapter  
27 70.95G RCW.

28 (3) The department may grant a waiver from the requirements of  
29 subsection (1) of this section consistent with section 7 of this act.

30 NEW SECTION. **Sec. 9.** (1) The department must establish a  
31 single-use food service product fee per item sold by a producer to a  
32 customer for final sale in Washington beginning January 1, 2022. The  
33 amount of the fees established by the department are as follows:

34 (a) One cent per item that is not recyclable or compostable; and

35 (b) Up to one cent per item for items that are recyclable or  
36 compostable. The department must determine the amount of the fee for  
37 compostable or recyclable items based on the average net cost of  
38 recycling or composting each material type and form, and the amount

1 of the material type used in plastic food service products sold in  
2 Washington.

3 (2) Each retail establishment must remit the fee assessed under  
4 this section to the department of revenue for deposit into the  
5 plastic waste reduction account created in section 12 of this act.  
6 The department must coordinate with the department of revenue to  
7 arrange for the collection of the fee in conjunction with taxes paid  
8 by retail establishments.

9 (3) Beginning January 1, 2030, the department must annually  
10 adjust the fees in subsection (1) of this section for inflation based  
11 on the consumer price index for all urban consumers applicable to the  
12 area encompassing the city of Seattle, as calculated by the United  
13 States bureau of labor statistics.

14 (4) The department may adopt rules to implement the fees required  
15 in this section.

16 (5) The fee in this section may not be imposed upon a product  
17 that is subject to a statewide plastic packaging product stewardship  
18 program that requires manufacturers of the product to provide for  
19 funding a program that requires, at minimum, the collection,  
20 transport, and end-of-life management costs of the product, including  
21 any such programs enacted consistent with recommendations to the  
22 legislature required under chapter 70.380 RCW.

23 NEW SECTION. **Sec. 10.** (1)(a) Except as provided in (b) of this  
24 subsection, a retail establishment in violation of this chapter is  
25 subject to a fine of up to five thousand dollars per violation.

26 (b) A retail establishment that is a small business as defined in  
27 RCW 19.85.020 in violation of this chapter is subject to a fine of up  
28 to one hundred dollars per violation.

29 (c) A separate violation occurs for each calendar day of  
30 operation in which a retail establishment is not in compliance with  
31 the requirements of this chapter. Penalties must be deposited in the  
32 plastic waste reduction account created in section 12 of this act.

33 (2)(a) The department must provide education and carry out  
34 outreach activities to inform retail establishments, consumers, and  
35 other interested individuals about the requirements of this chapter.  
36 The education and outreach activities carried out by the department  
37 must include education and outreach programs suitable for small  
38 business owners and the state's diverse ethnic populations, including  
39 language appropriate materials and targeted outreach and distribution



1 of culturally appropriate materials. The department must prioritize  
2 outreach, including technical assistance with waiver applications  
3 under section 7 of this act, to small businesses and women and  
4 minority-owned businesses.

5 (b) In carrying out its responsibilities under this chapter, the  
6 department must emphasize education and outreach rather than  
7 enforcement to achieve compliance with the requirements of this  
8 chapter.

9 (3) The department may adopt rules for the purpose of  
10 implementing, administering, and enforcing this chapter.

11 NEW SECTION. **Sec. 11.** (1) Beginning July 1, 2020, a city, town,  
12 county, or municipal corporation may not enact an ordinance to reduce  
13 pollution from single-use plastic food service products by requiring  
14 a request of plastic food service products by the customer of the  
15 food service business or other retail establishment.

16 (2) Any local plastic food service products ordinance of the type  
17 described in subsection (1) of this section that is in effect as of  
18 July 1, 2020, is not preempted or repealed.

19 NEW SECTION. **Sec. 12.** The plastic waste reduction account is  
20 created in the state treasury. All receipts from fees and penalties  
21 collected under this chapter must be deposited in the account. Moneys  
22 in the account may be spent only after appropriation. Expenditures  
23 from the account may be used only for administering, implementing,  
24 and enforcing the requirements of this chapter and for the state and  
25 local programs authorized for expenditures in RCW 70.105D.190(2) (b)  
26 and (e), including for the development of local solid waste  
27 management plans components required by RCW 70.95.080(3) and for the  
28 development of plans and infrastructure to support the statewide  
29 provision of composting infrastructure by a target date of 2030.

30 NEW SECTION. **Sec. 13.** Nothing in this chapter changes or limits  
31 the authority of the Washington utilities and transportation  
32 commission to regulate collection of solid waste, including curbside  
33 collection of residential recyclable materials, nor does this chapter  
34 change or limit the authority of a city or town to provide the  
35 service itself or by contract under RCW 81.77.020.

1        NEW SECTION.    **Sec. 14.**    By November 1st of every even-numbered  
2 year, beginning in 2022, the department must submit a report to the  
3 legislature that:

4        (1) Addresses the status of composting infrastructure available  
5 to serve local jurisdictions across Washington in preparation for the  
6 2030 statewide restrictions on plastic food service products, relying  
7 upon information included in local solid waste management plans under  
8 RCW 70.95.080(3); and

9        (2) Assesses whether an update to the definition of "compostable"  
10 used in section 2 of this act would be beneficial in ensuring that a  
11 statewide standard applicable to compostable products also ensures  
12 that these products may be composted and managed appropriately by  
13 facilities that receive them.

14        **Sec. 15.**    RCW 70.95.080 and 2010 c 154 s 2 are each amended to  
15 read as follows:

16        (1) Each county within the state, in cooperation with the various  
17 cities located within such county, shall prepare a coordinated,  
18 comprehensive solid waste management plan. Such plan may cover two or  
19 more counties. The purpose is to plan for solid waste and materials  
20 reduction, collection, and handling and management services and  
21 programs throughout the state, as designed to meet the unique needs  
22 of each county and city in the state. When updating a solid waste  
23 management plan developed under this chapter, after June 10, ((2010))  
24 2020, local comprehensive plans must consider and plan for the  
25 following handling methods or services:

26        (a) Source separation of recyclable materials and products,  
27 organic materials, and wastes by generators;

28        (b) Collection of source separated materials;

29        (c) Handling and proper preparation of materials for reuse or  
30 recycling;

31        (d) Handling and proper preparation of organic materials for  
32 composting or anaerobic digestion; and

33        (e) Handling and proper disposal of nonrecyclable wastes.

34        (2) When updating a solid waste management plan developed under  
35 this chapter, after June 10, ((2010)) 2020, each local comprehensive  
36 plan must, at a minimum, consider methods that will be used to  
37 address the following:

38        (a) Construction and demolition waste for recycling or reuse;

1 (b) Organic material including yard debris, food waste,  
2 compostable food service products as defined in section 2 of this  
3 act, and food contaminated paper products for composting or anaerobic  
4 digestion;

5 (c) Recoverable paper products for recycling;

6 (d) Metals, glass, and plastics for recycling; and

7 (e) Waste reduction strategies.

8 (3) When updating a solid waste management plan developed under  
9 this chapter after June 10, 2020, each local plan must include an  
10 assessment of the logistical and economic feasibility of the  
11 development and use of infrastructure, including appropriate  
12 collection services for residential and commercial solid waste  
13 customers, that would allow for the widespread commercial composting  
14 of organic materials, including compostable food service products as  
15 defined in section 2 of this act, generated in the jurisdiction by a  
16 target deadline of 2030.

17 (4) Each city shall:

18 (a) Prepare and deliver to the county auditor of the county in  
19 which it is located its plan for its own solid waste management for  
20 integration into the comprehensive county plan;

21 (b) Enter into an agreement with the county pursuant to which the  
22 city shall participate in preparing a joint city-county plan for  
23 solid waste management; or

24 (c) Authorize the county to prepare a plan for the city's solid  
25 waste management for inclusion in the comprehensive county plan.

26 ~~((4))~~ (5) Two or more cities may prepare a plan for inclusion  
27 in the county plan. With prior notification of its home county of its  
28 intent, a city in one county may enter into an agreement with a city  
29 in an adjoining county, or with an adjoining county, or both, to  
30 prepare a joint plan for solid waste management to become part of the  
31 comprehensive plan of both counties.

32 ~~((5))~~ (6) After consultation with representatives of the cities  
33 and counties, the department shall establish a schedule for the  
34 development of the comprehensive plans for solid waste management. In  
35 preparing such a schedule, the department shall take into account the  
36 probable cost of such plans to the cities and counties.

37 ~~((6))~~ (7) Local governments shall not be required to include a  
38 hazardous waste element in their solid waste management plans.

1        NEW SECTION.    **Sec. 16.**    Section 8 of this act takes effect July  
2    1, 2030.

3        NEW SECTION.    **Sec. 17.**    Sections 1 through 14 of this act  
4    constitute a new chapter in Title 70 RCW.

5        NEW SECTION.    **Sec. 18.**    If any provision of this act or its  
6    application to any person or circumstance is held invalid, the  
7    remainder of the act or the application of the provision to other  
8    persons or circumstances is not affected.

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