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ENGROSSED SUBSTITUTE HOUSE BILL 2722

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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 (5) The legislature encourages beverage manufacturers to use  
13 plastic beverage containers that exceed the standards set forth in  
14 this act.

15 NEW SECTION. **Sec. 2.** (1)(a) Between January 1, 2022, and  
16 December 31, 2024, inclusive, the total number of plastic beverage  
17 containers filled with a beverage described in section 4 of this act  
18 that are sold, offered for sale, or distributed in Washington by a  
19 beverage manufacturer must contain no less than ten percent  
20 postconsumer recycled plastic per year.

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

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

32 (2)(a) Every other year, beginning in 2021, or at the petition of  
33 the beverage manufacturing industry not more than annually, the  
34 director of the department of ecology shall consider whether the  
35 minimum recycled content requirements required pursuant to subsection  
36 (1) of this section should be waived or reduced. If the director of  
37 the department of ecology receives a petition from the beverage  
38 manufacturing industry, the director shall consider the petition  
39 within sixty days. If the director of the department of ecology makes

1 a finding that a minimum recycled content requirement pursuant to  
2 this section should be adjusted, the adjusted rate for the  
3 requirement must be in effect until a new determination for the  
4 requirement is made or upon the expiration of the requirement's  
5 effective period, whichever occurs first. The director of the  
6 department of ecology may not adjust the minimum recycled content  
7 requirements above the minimum postconsumer recycled plastic content  
8 percentages required pursuant to subsection (1) of this section. In  
9 making a determination pursuant to this subsection, the director of  
10 the department of ecology shall consider, at a minimum, all of the  
11 following:

12 (i) Changes in market conditions, including supply and demand for  
13 postconsumer recycled plastics, collection rates, and bale  
14 availability;

15 (ii) Recycling rates;

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

21 (iv) The capacity of recycling or processing infrastructure;

22 (v) The progress made by beverage manufacturers in achieving the  
23 goals of this section; and

24 (vi) The carbon footprint of the transportation of the recycled  
25 resin.

26 (b) The beverage manufacturing industry or a beverage  
27 manufacturer may appeal the director of ecology's decision made  
28 pursuant to this subsection to the pollution control hearings board  
29 within thirty days of the director's decision.

30 (c) For the purposes of this section, "beverage manufacturing  
31 industry" means an association that represents companies that  
32 manufacture beverages.

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

1 (4) (a) On or before March 1, 2022, and annually thereafter, a  
2 beverage manufacturer of a beverage described in section 4 of this  
3 act sold in a plastic beverage container described in section 4 of  
4 this act must report to the department of ecology in pounds and by  
5 resin type the amount of virgin plastic and postconsumer recycled  
6 plastic used by the beverage manufacturer for plastic beverage  
7 containers containing a beverage described in section 4 of this act  
8 sold, offered for sale, or distributed in Washington in the previous  
9 calendar year. The beverage manufacturer shall submit this  
10 information to the department of ecology under penalty of perjury.

11 (b) The department of ecology shall post the information reported  
12 under this subsection on the department's web site.

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

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

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

27 (8) This section does not apply to:

28 (a) Refillable plastic beverage containers;

29 (b) Rigid plastic containers or rigid plastic bottles that are  
30 medical devices, medical products that are required to be sterile,  
31 prescription medicine, and packaging used for those products; or

32 (c) Bladders or pouches that contain wine.

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

1 development center created in RCW 70.370.030 for the purpose of  
2 furthering the development of recycling infrastructure 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 that contains the following beverages, intended for human or  
6 animal consumption and in a quantity less than or equal to one  
7 gallon, offered for sale, sold, or distributed in Washington:

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

10 (i) Water and flavored water;

11 (ii) Beer or other malt beverages;

12 (iii) Wine; and

13 (iv) Mineral waters, soda water, and similar carbonated soft  
14 drinks;

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

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

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

34 (i) If a beverage manufacturer has an overall compliance rate of  
35 at least seventy-five percent but less than one hundred percent of  
36 the minimum recycled plastic content requirements pursuant to this  
37 subsection (1)(a), that is a level one violation;

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

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

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

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

17 (b) The fee amounts assessed pursuant to this subsection are as  
18 follows:

19 (i) For a level one violation, the fee range is five cents  
20 (\$0.05) to fifteen cents (\$0.15) per pound;

21 (ii) For a level two violation, the fee range is ten cents  
22 (\$0.10) to twenty cents (\$0.20) per pound;

23 (iii) For a level three violation, the fee range is fifteen cents  
24 (\$0.15) to twenty-five cents (\$0.25) per pound;

25 (iv) For a level four violation, the fee range is twenty cents  
26 (\$0.20) to thirty cents (\$0.30) per pound;

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

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

33 (d) The department of ecology shall consider equitable factors in  
34 determining whether to assess a fee and the amount of the fee  
35 including, but not limited to: The nature and circumstances of the  
36 violation; actions taken by the beverage manufacturer to correct the  
37 violation; the beverage manufacturer's history of compliance; the  
38 size and economic condition of the manufacturer; and whether the  
39 violation or conditions giving rise to the violation were due to  
40 circumstances beyond the reasonable control of the beverage

1 manufacturer or were otherwise unavoidable under the circumstances  
2 including, but not limited to, unforeseen changes in market  
3 conditions.

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

8 (f) A beverage manufacturer that has been assessed fees pursuant  
9 to this section may appeal the assessment of fees to the pollution  
10 control hearings board within thirty days of the assessment.

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

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

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

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

27 (i) Anomalous market conditions;

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

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

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

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

37 Information submitted to the department of ecology under chapter  
38 70.--- RCW (the new chapter created in section 7 of this act), that  
39 contains business trade secrets or proprietary information about

1 manufacturing processes and equipment, is exempt from disclosure  
2 under this chapter.

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

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