

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2722

66th Legislature
2020 Regular Session

Passed by the House March 11, 2020
Yeas 57 Nays 40

**Speaker of the House of
Representatives**

Passed by the Senate March 10, 2020
Yeas 28 Nays 21

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2722** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2722

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

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;
2 reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new
3 section to chapter 42.56 RCW; adding a new chapter to Title 70 RCW;
4 creating a new section; prescribing penalties; providing an effective
5 date; and providing an expiration date.

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

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

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

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

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

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

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout sections 3 through 8 of this act unless the context
19 clearly requires otherwise.

20 (1) "Beverage manufacturer" means a manufacturer of one or more
21 beverages described in section 3(1) of this act, that are sold,
22 offered for sale, or distributed in Washington.

23 (2) "Beverage manufacturing industry" means an association that
24 represents companies that manufacture beverages.

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

26 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2022, beverage
27 manufacturers that offer for sale, sell, or distribute in Washington
28 beverages, intended for human or animal consumption and in a quantity
29 more than or equal to two fluid ounces and less than or equal to one
30 gallon, must meet minimum postconsumer recycled content as required
31 under section 4 of this act, on average for the total number of
32 plastic beverage containers for the following beverages:

33 (a) Water and flavored water;

34 (b) Beer or other malt beverages;

35 (c) Wine;

36 (d) Mineral waters, soda water, and similar carbonated soft
37 drinks; and

1 (e) Any beverage other than those specified in this subsection,
2 except infant formula.

3 (2) The following containers are exempt from sections 3 through 6
4 of this act:

5 (a) Refillable plastic beverage containers;

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

9 (c) Bladders or pouches that contain wine.

10 (3) The department may adopt rules to exempt beverages.

11 NEW SECTION. **Sec. 4.** (1) Every year, a beverage manufacturer
12 must meet the following minimum postconsumer recycled plastic content
13 on average for the total number of plastic beverage containers for
14 beverages as established in section 3 of this act that are sold,
15 offered for sale, or distributed in Washington effective:

16 (a) January 1, 2022, through December 31, 2024: No less than ten
17 percent postconsumer recycled plastic;

18 (b) January 1, 2025, through December 31, 2029: No less than
19 twenty-five percent postconsumer recycled plastic;

20 (c) On and after January 1, 2030: No less than fifty percent
21 postconsumer recycled plastic.

22 (2)(a) Beginning in 2021, and every other year thereafter, or at
23 the petition of the beverage manufacturing industry but not more than
24 annually, the department shall consider whether the minimum
25 postconsumer recycled content requirements established under
26 subsection (1) of this section should be waived or reduced. The
27 department must consider a petition from the beverage manufacturing
28 industry within sixty days of receipt.

29 (b) If the department determines that a minimum postconsumer
30 recycled content requirement should be adjusted, the adjusted rate
31 must be in effect until a new determination is made or upon the
32 expiration of the minimum postconsumer recycled content requirement's
33 effective period, whichever occurs first. The department may not
34 adjust the minimum postconsumer recycled content requirements above
35 the minimum postconsumer recycled plastic content percentages, as
36 established under subsection (1) of this section. In making a
37 determination to adjust the minimum postconsumer recycled content
38 requirements the department must at least consider the following:

1 (i) Changes in market conditions, including supply and demand for
2 postconsumer recycled plastics, collection rates, and bale
3 availability;

4 (ii) Recycling rates;

5 (iii) The availability of recycled plastic suitable to meet the
6 minimum postconsumer recycled content requirements, including the
7 availability of high quality recycled plastic, and food grade
8 recycled plastic from beverage container recycling programs;

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

10 (v) The progress made by beverage manufacturers in meeting the
11 requirements of this section; and

12 (vi) The carbon footprint of the transportation of the recycled
13 resin.

14 (3) The beverage manufacturing industry or a beverage
15 manufacturer may appeal adjustments to the requirement for minimum
16 postconsumer recycled content as determined under subsection (1) of
17 this section to the pollution control hearings board within thirty
18 days of the department's determination.

19 (4) The department may grant extensions of time for beverage
20 manufacturers to meet the minimum postconsumer recycled plastic
21 content requirements established under subsection (1) of this section
22 if the department determines that a beverage manufacturer has made a
23 substantial effort but has failed to meet the minimum recycled
24 plastic content requirements due to extenuating circumstances beyond
25 the beverage manufacturer's control.

26 (5) A beverage manufacturer that does not meet the minimum
27 postconsumer recycled plastic content requirements established in
28 subsection (1) of this section is subject to a fee established in
29 section 6 of this act.

30 NEW SECTION. **Sec. 5.** (1)(a) On or before March 1, 2022, and
31 annually thereafter, a beverage manufacturer, under penalty of
32 perjury, must report to the department, in pounds and by resin type,
33 the amount of virgin plastic and postconsumer recycled plastic used
34 for plastic beverage containers containing a beverage as established
35 under section 3 of this act sold, offered for sale, or distributed in
36 Washington in the previous calendar year.

37 (b) The department must post the information reported under this
38 subsection on its web site.

1 (2) The department may: (a) Conduct audits and investigations for
2 the purpose of ensuring compliance with this section based on the
3 information reported under subsection (1) of this section; and (b)
4 adopt rules to implement, administer, and enforce the requirements of
5 this act.

6 (3) The department shall keep confidential all business trade
7 secrets and proprietary information about manufacturing processes and
8 equipment that the department gathers or becomes aware of through the
9 course of conducting audits or investigations pursuant to this
10 chapter.

11 NEW SECTION. **Sec. 6.** (1) Beginning January 1, 2022, a beverage
12 manufacturer that does not meet the minimum postconsumer recycled
13 plastic content requirements as established under section 4 of this
14 act, based upon the amount in pounds and in the aggregate, is subject
15 to an annual fee.

16 (2) The following violation levels are based on a beverage
17 manufacturer's overall compliance rate of the minimum postconsumer
18 recycled plastic content requirements.

19 (a) Level one violation: At least seventy-five percent but less
20 than one hundred percent of the minimum recycled plastic content
21 requirements;

22 (b) Level two violation: At least fifty percent but less than
23 seventy-five percent of the minimum recycled plastic content
24 requirements;

25 (c) Level three violation: At least twenty-five percent but less
26 than fifty percent of the minimum recycled plastic content
27 requirements;

28 (d) Level four violation: At least fifteen percent but less than
29 twenty-five percent of the minimum recycled plastic content
30 requirements; and

31 (e) Level five violation: Less than fifteen percent of the
32 minimum recycled plastic content requirements.

33 (3) Beginning March 1, 2023, the department may assess fees for
34 violations as follows:

35 (a) Level one violation, the fee range is five cents to fifteen
36 cents per pound;

37 (b) Level two violation, the fee range is ten cents to twenty
38 cents per pound;

1 (c) Level three violation, the fee range is fifteen cents to
2 twenty-five cents per pound;

3 (d) Level four violation, the fee range is twenty cents to thirty
4 cents per pound;

5 (e) Level five violation, the fee range is twenty-five cents to
6 thirty cents per pound.

7 (4) In lieu of or in addition to assessing a fee under subsection
8 (3) of this section, the department may require a beverage
9 manufacturer to submit a corrective action plan detailing how the
10 beverage manufacturer plans to come into compliance with section 4 of
11 this act.

12 (5) The department shall consider equitable factors in
13 determining whether to assess a fee under subsection (3) of this
14 section and the amount of the fee including, but not limited to: The
15 nature and circumstances of the violation; actions taken by the
16 beverage manufacturer to correct the violation; the beverage
17 manufacturer's history of compliance; the size and economic condition
18 of the beverage manufacturer; and whether the violation or conditions
19 giving rise to the violation were due to circumstances beyond the
20 reasonable control of the beverage manufacturer or were otherwise
21 unavoidable under the circumstances including, but not limited to,
22 unforeseen changes in market conditions.

23 (6) A beverage manufacturer must:

24 (a) Pay to the department assessed fees in quarterly
25 installments; or

26 (b) Arrange an alternative payment schedule subject to the
27 approval of the department.

28 (7) A beverage manufacturer may appeal fees assessed under this
29 section to the pollution control hearings board within thirty days of
30 assessment.

31 (8) (a) The department shall consider waiving or reducing the fees
32 or extending the time frame for assessing fees established under
33 subsection (3) of this section for a beverage manufacturer that has
34 demonstrated progress toward meeting the minimum postconsumer
35 recycled content requirements, as established under section 4 of this
36 act, if the beverage manufacturer:

37 (i) Has failed to meet the minimum postconsumer recycled content
38 requirements; or

39 (ii) Anticipates it will not be able to meet the minimum
40 postconsumer recycled content requirements.

1 (b) In determining whether to grant a waiver of, or reduce a fee,
2 or extend the time frame for assessing a fee, the department shall
3 consider, at a minimum, all of the following:

4 (i) Anomalous market conditions;

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

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

8 (9) A beverage manufacturer shall pay the fees assessed pursuant
9 to this section, as applicable, based on the information reported to
10 the department as required under section 5(1) of this act in the form
11 and manner prescribed by the department.

12 NEW SECTION. **Sec. 7.** The recycling enhancement fee account is
13 created in the state treasury. All fees collected by the department
14 pursuant to section 6 of this act must be deposited in the account.
15 Moneys in the account may be spent only after appropriation.
16 Expenditures from the account may be used by the department only for
17 providing funding to the recycling development center created in RCW
18 70.370.030 for the purpose of furthering the development of recycling
19 infrastructure in this state.

20 NEW SECTION. **Sec. 8.** (1) A city, town, county, or municipal
21 corporation may not implement local recycled content requirements for
22 plastic beverage containers that must meet minimum postconsumer
23 recycled content as required under sections 3 and 4 of this act.

24 (2) Local laws and ordinances that are inconsistent with, more
25 restrictive than, or exceed the requirements of this act, may not be
26 enacted and are preempted.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 42.56
28 RCW to read as follows:

29 Information submitted to the department of ecology under chapter
30 70.--- RCW (the new chapter created in section 14 of this act), that
31 contains business trade secrets or proprietary information about
32 manufacturing processes and equipment, is exempt from disclosure
33 under this chapter.

34 **Sec. 10.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
35 and 2019 c 290 s 12 are each reenacted and amended to read as
36 follows:

1 (1) The hearings board shall only have jurisdiction to hear and
2 decide appeals from the following decisions of the department, the
3 director, local conservation districts, the air pollution control
4 boards or authorities as established pursuant to chapter 70.94 RCW,
5 local health departments, the department of natural resources, the
6 department of fish and wildlife, the parks and recreation commission,
7 and authorized public entities described in chapter 79.100 RCW:

8 (a) Civil penalties imposed pursuant to RCW 18.104.155,
9 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170,
10 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
11 90.56.310, 90.56.330, and 90.64.102.

12 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
13 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
14 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

15 (c) A final decision by the department or director made under
16 chapter 183, Laws of 2009.

17 (d) Except as provided in RCW 90.03.210(2), the issuance,
18 modification, or termination of any permit, certificate, or license
19 by the department or any air authority in the exercise of its
20 jurisdiction, including the issuance or termination of a waste
21 disposal permit, the denial of an application for a waste disposal
22 permit, the modification of the conditions or the terms of a waste
23 disposal permit, or a decision to approve or deny an application for
24 a solid waste permit exemption under RCW 70.95.300.

25 (e) Decisions of local health departments regarding the grant or
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27 (f) Decisions of local health departments regarding the issuance
28 and enforcement of permits to use or dispose of biosolids under RCW
29 70.95J.080.

30 (g) Decisions of the department regarding waste-derived
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
32 decisions of the department regarding waste-derived soil amendments
33 under RCW 70.95.205.

34 (h) Decisions of local conservation districts related to the
35 denial of approval or denial of certification of a dairy nutrient
36 management plan; conditions contained in a plan; application of any
37 dairy nutrient management practices, standards, methods, and
38 technologies to a particular dairy farm; and failure to adhere to the
39 plan review and approval timelines in RCW 90.64.026.

1 (i) Any other decision by the department or an air authority
2 which pursuant to law must be decided as an adjudicative proceeding
3 under chapter 34.05 RCW.

4 (j) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

9 (k) Forest health hazard orders issued by the commissioner of
10 public lands under RCW 76.06.180.

11 (l) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
14 comply, to issue a civil penalty, or to issue a notice of intent to
15 disapprove applications.

16 (m) Decisions of the department of natural resources that are
17 reviewable under RCW 78.44.270.

18 (n) Decisions of an authorized public entity under RCW 79.100.010
19 to take temporary possession or custody of a vessel or to contest the
20 amount of reimbursement owed that are reviewable by the hearings
21 board under RCW 79.100.120.

22 (o) Decisions of the department that are appealable under
23 sections 4 and 6 of this act, to set recycled minimum postconsumer
24 content for plastic beverage containers and to assess fees.

25 (2) The following hearings shall not be conducted by the hearings
26 board:

27 (a) Hearings required by law to be conducted by the shorelines
28 hearings board pursuant to chapter 90.58 RCW.

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
31 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110
33 and 90.44.220.

34 (d) Hearings conducted by the department to adopt, modify, or
35 repeal rules.

36 (3) Review of rules and regulations adopted by the hearings board
37 shall be subject to review in accordance with the provisions of the
38 administrative procedure act, chapter 34.05 RCW.

1 **Sec. 11.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
2 and 2019 c 290 s 12 are each reenacted and amended to read as
3 follows:

4 (1) The hearings board shall only have jurisdiction to hear and
5 decide appeals from the following decisions of the department, the
6 director, local conservation districts, the air pollution control
7 boards or authorities as established pursuant to chapter 70.94 RCW,
8 local health departments, the department of natural resources, the
9 department of fish and wildlife, the parks and recreation commission,
10 and authorized public entities described in chapter 79.100 RCW:

11 (a) Civil penalties imposed pursuant to RCW 18.104.155,
12 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170,
13 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
14 90.56.310, 90.56.330, and 90.64.102.

15 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
16 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
17 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

18 (c) Except as provided in RCW 90.03.210(2), the issuance,
19 modification, or termination of any permit, certificate, or license
20 by the department or any air authority in the exercise of its
21 jurisdiction, including the issuance or termination of a waste
22 disposal permit, the denial of an application for a waste disposal
23 permit, the modification of the conditions or the terms of a waste
24 disposal permit, or a decision to approve or deny an application for
25 a solid waste permit exemption under RCW 70.95.300.

26 (d) Decisions of local health departments regarding the grant or
27 denial of solid waste permits pursuant to chapter 70.95 RCW.

28 (e) Decisions of local health departments regarding the issuance
29 and enforcement of permits to use or dispose of biosolids under RCW
30 70.95J.080.

31 (f) Decisions of the department regarding waste-derived
32 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
33 decisions of the department regarding waste-derived soil amendments
34 under RCW 70.95.205.

35 (g) Decisions of local conservation districts related to the
36 denial of approval or denial of certification of a dairy nutrient
37 management plan; conditions contained in a plan; application of any
38 dairy nutrient management practices, standards, methods, and
39 technologies to a particular dairy farm; and failure to adhere to the
40 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority
2 which pursuant to law must be decided as an adjudicative proceeding
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
14 comply, to issue a civil penalty, or to issue a notice of intent to
15 disapprove applications.

16 (l) Decisions of the department of natural resources that are
17 reviewable under RCW 78.44.270.

18 (m) Decisions of an authorized public entity under RCW 79.100.010
19 to take temporary possession or custody of a vessel or to contest the
20 amount of reimbursement owed that are reviewable by the hearings
21 board under RCW 79.100.120.

22 (n) Decisions of the department that are appealable under
23 sections 4 and 6 of this act, to set recycled minimum postconsumer
24 content for plastic beverage containers and to assess fees.

25 (2) The following hearings shall not be conducted by the hearings
26 board:

27 (a) Hearings required by law to be conducted by the shorelines
28 hearings board pursuant to chapter 90.58 RCW.

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
31 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110
33 and 90.44.220.

34 (d) Hearings conducted by the department to adopt, modify, or
35 repeal rules.

36 (3) Review of rules and regulations adopted by the hearings board
37 shall be subject to review in accordance with the provisions of the
38 administrative procedure act, chapter 34.05 RCW.

1 NEW SECTION. **Sec. 12.** Section 10 of this act expires June 30,
2 2021.

3 NEW SECTION. **Sec. 13.** Section 11 of this act takes effect June
4 30, 2021.

5 NEW SECTION. **Sec. 14.** Sections 2 through 8 of this act
6 constitute a new chapter in Title 70 RCW.

--- END ---