

BILL ANALYSIS

LD 2104 – An Act To Support and Increase the Recycling of Packaging (Committee bill)

Bill summary

This committee bill was reported out pursuant to Resolve 2019, chapter 42, section 2 (LD 1431 from last session, as enacted). It establishes a stewardship program for packaging to be operated by a stewardship organization contracted by the DEP following a competitive bidding process. Under that program, producers of packaging pay into a fund based on the amount by weight of packaging material they sell, offer for sale or distribute for sale in the State. Producers can wholly or partially offset this payment obligation by implementing independent programs to recycle packaging of the same material type for which they have a payment obligation and can further reduce their payment obligation by reducing the amount of packaging they sell, offer for sale or distribute for sale in the State, by redesigning that packaging to make it more valuable as a recyclable material or by meeting other program incentive requirements.

Producer payments received by the stewardship organization are used to reimburse eligible municipalities for certain incurred recycling and waste management costs. To be eligible for such reimbursements, a municipality must share with the stewardship organization certain data regarding its incurred recycling and waste management costs. Recycling-related reimbursements to municipalities will be based on the median recycling costs incurred by similarly situated municipalities, while disposal-related reimbursements will be based on per capita disposal costs. The stewardship organization is authorized to use producer payments remaining after all reimbursements are paid to cover operational costs for the program, department fees, investments by the organization in education and infrastructure aimed at improving recycling outcomes in the State and funding for the Maine Solid Waste Diversion Grant Program established under Title 38, section 2201-B.

Suggested amendments/additional notes

1. **DEP proposal** – as described in its testimony, DEP intends to propose an amendment to the bill to remove those portions of the bill requiring the stewardship organization to submit a program plan for approval and to instead establish much of the program framework and requirements through major substantive rulemaking, to be initiated by December 31, 2021;
2. **Definition of “municipality”**
 - a. Include quasi-municipal associations, solid waste management districts and other regional/interlocal associations in the definition (Aroostook Waste Solutions and Maine Municipal Association);
 - b. Include counties in the definition (Maine Municipal Association);

3. Definition of “packaging material”

- a. Exclude from the definition any material associated with beverage containers that are managed under the State’s bottle bill program (Sen. H. Sanborn and others);
- b. Exclude from the definition any material that is used in the packaging of a product that is regulated as a drug by the US FDA under the federal Food, Drug, and Cosmetic Act (Consumer Healthcare Products Association);
- c. Exclude from the definition paint containers that contain paint managed under the State’s paint stewardship program (American Coatings Association);
- d. Include paper in the definition (i.e., make explicit that certain (all?) paper products are considered packaging material) (Conservation Law Foundation and Surfrider Foundation);
- e. Further consider the exclusion from this new program of beverage containers that are managed under the bottle bill program (e.g., perhaps leave glass containers in the bottle bill but allow plastic and metal containers to be managed under the new program) (Maine Beverage Association);
- f. Further clarify the scope of this definition to avoid ambiguity (multiple persons);

4. Definition of “producer” – further clarify the scope of this definition to avoid ambiguity (multiple persons);

5. Definition of “readily recyclable”

- a. This definition and the proposal in general needs to address compostable packaging material (National Confectioners Association);
- b. Need to address the recyclability of glass considering its lower commodity value as part of a mixed recyclables stream and accounting for its higher commodity value as part of the bottle bill program (Glass Packaging Institute);
- c. Remove reference in the definition to purchase of “full bales” of processed material to account for processing facilities that sell non-baled recyclable commodities (Coastal Resources of Maine);

6. Definition of “similar municipalities” – include reference to “access to similar resources” (Maine Municipal Association);

7. Definition of “toxicity” – amend scope of the definition to reference intentionally introduced chemicals regulated under Title 32, chapter 26-A (Environmental Health Strategy Center);

8. Additional definitional changes – implement industry-accepted definitions for the terms “recycling,” “recyclable,” “recycled material,” “processing” and “materials recovery facility” (ISRI; proposed definitions included in testimony);

9. Incentives – clarify incentive language to focus on the reduction of toxicity in packaging material (Environmental Health Strategy Center);

10. Packaging stewardship program

- a. Move organization’s annual reporting date to July 1 (Carole Cifrino);
- b. Establishing recycling targets to be met by the organization (TOMRA);

11. Alternative collection programs

- a. Eliminate or reduce incineration allowance for alternative collection programs (Conservation Law Foundation and Surfrider Foundation);
- b. Move annual reporting date for such programs to April 1 (Carole Cifrino);
- c. Require alternative collection programs to establish collection points for the collection of material that avoids increased costs on rural communities to access such collection points (Maine Municipal Association);

12. Producer payments – recognize voluntary efforts already made by companies to reduce packaging and make packaging more recyclable (Toy Association);

13. Participating municipality reimbursements

- a. Allow all municipalities (i.e., not just participating) to be eligible for per capita reimbursements for material that is not readily recyclable (Carole Cifrino);
- b. Require participating municipalities to dedicate a minimum specified portion of reimbursements to municipal waste management activities (Carole Cifrino);
- c. Require the program to establish a reserve account in the packaging stewardship fund for holding excess funds after payment of program costs and DEP fees to ensure future municipal reimbursements (Aroostook Waste Solutions);
- d. Reimburse participating municipalities for management costs for packaging material that is not readily recyclable at the same rate regardless of the proximity of a municipality to an incinerator (City of Bath; Coastal Resources of Maine/Municipal Review Committee raised similar questions more broadly with respect to referencing incinerators only and to ensuring that the CRM facility was included);

- 14. Analyst note – formulas** – as I stated at the late January meeting at which my redraft of the DEP’s original proposal was distributed, the DEP had identified at least one issue with the formulas described in the proposal for the calculation of producer payments and participating municipality reimbursements.

It may not be necessary, however, to discuss any such issues further given that DEP at the hearing discussed an amendment that would shift determination of such calculations to rulemaking.

15. Small producer exemption

- a. Expand the threshold for the exemption based on gross annual sales revenue from the \$1 million in the bill to a significantly higher threshold (\$30 to 50 million suggested) (Bixby Chocolates);
- b. Further clarify in the exemption the scope of the phrase “single of point of retail sale” (HospitalityMaine);
- c. Authorize participation in the stewardship program by exempt producers on a voluntary basis (Maine Municipal Association);

- 16. Contingent effective date** – incorporate a contingent effective date for the law that would be based on substantially similar legislation being adopted in at least 5 contiguous states including Maine. If that contingency were not met by 1/1/2024, the law would repeal (Robert Tardy); and

- 17. Advisory committee** – include an advisory committee for the organization with stakeholder representation (Conservation Law Foundation).